

**IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO**

EFM TRANSFER AGENT, LLC,	:	
	:	
Plaintiff,	:	Case No. 21CV005425
	:	
v.	:	Judge Sheryl K. Munson
	:	
APEX COLONIAL OH LLC, et al.,	:	
	:	
Defendants.	:	

**JOINT MOTION OF PLAINTIFF EFM TRANSFER AGENT, LLC AND INTERESTED
PARTY CITY OF COLUMBUS FOR THE APPOINTMENT OF A RECEIVER**

Pursuant to R.C. 2735.01, Plaintiff EFM Transfer Agent, LLC (“EFM”) and Interested Party City of Columbus (collectively, “Movants”) move the Court for the immediate appointment of a receiver to manage and arrange for the sale of the property at issue in this case (the “Premises”). The Premises is in danger of being lost, materially injured, diminished in value, or squandered by the mismanagement and code violations of the current owner, Defendant Apex Colonial OH LLC, which has also defaulted on its mortgage obligations to EFM. For the reasons set forth here and in the following Memorandum in Support, Movants respectfully request that the Court grant this Joint Motion and issue the attached Proposed Order Appointing Receiver.

/s/ Tiara N. Ross
Tiara N. Ross (0089583)
Sarah C. Pomeroy (0093578)
Assistant City Attorneys
375 South High Street, 17th Floor
Columbus, Ohio 43215
Phone: (614) 645-0781
tnross@columbus.gov
scpomeroy@columbus.gov

*Counsel for Interested Party City of
Columbus*

/s/ Joseph C. Pickens
Joseph C. Pickens (0076239)
jpickens@taftlaw.com
James V. Maniace (0003178)
jmaniace@taftlaw.com
Jonathan N. Olivito (0092169)
jolivito@taftlaw.com
Taft Stettinius & Hollister LLP
65 East State Street, Suite 1000
Columbus, Ohio 43215
Telephone: (614) 221-2838
Facsimile: (614) 221-2007

Counsel for Plaintiff EFM Transfer Agent, LLC

MEMORANDUM IN SUPPORT

I. Introduction.

Defendant Apex Colonial OH LLC (“Apex Colonial”) financed the purchase of the property at issue in this case (the “Premises”) through a \$15.5 million loan.¹ Defendants Aron Poretz (“Poretz”) and Oron Zarum (“Zarum”) guaranteed the payment of that loan. And Plaintiff EFM Transfer Agent, LLC (“EFM”) is the assignee of the mortgage and other instruments securing that loan. Apex Colonial, Poretz, and Zarum (collectively, the “Owners”) have defaulted on their obligations under the loan documents by, among other things, failing to make monthly payments to EFM under the Promissory Note, failing to pay real estate taxes when due, failing to properly care for and keep the Premises in good condition and repair, failing to comply with all laws, ordinances, regulations, or governmental orders affecting the Premises, and allowing the attachment of various liens and encumbrances to the Premises without posting a bond or indemnification satisfactory to EFM. These defaults alone—and particularly the Owners’ failure to pay real estate taxes—establish the need to appoint a receiver over the Premises, a remedy that the Owners explicitly agreed to in the loan documents.

Adding to the urgency of the matter is the Franklin County Municipal Court, Environmental Division’s (the “Environmental Court”) recent finding in *State ex rel. Klein v. Apex Colonial OH LLC, et al.*, Franklin Cty. Municipal Ct., Env’tl. Div. No. 2021 EVH 60155 (“*Klein*”)—an environmental enforcement lawsuit filed by the City of Columbus (the “City”)—that the Owners and others are guilty of maintaining a public nuisance at the Premises. (*Klein*

¹ The Premises is a 508-unit multi-family residential apartment complex, spanning thirty parcels and ninety-six buildings, located on the east side of Columbus and known as Colonial Village Apartments. The Premises is described in more detail in paragraph 1 of EFM’s Complaint in this matter.

Stipulated Order at 6–7.)² That public nuisance, the Environmental Court found, “threaten[ed] the health, safety, and welfare of the people of the City of Columbus, persons at the Premises, and members of the Columbus, Ohio Division of Police and Division of Fire.” (*Id.* at 7.) “[T]he permission or existence of criminal activity at the Premises . . . substantially interferes with the area’s public decency, sobriety, peace, safety, welfare, and good order,” the Environmental Court further concluded. (*Id.* at 6.) Because the Premises is not in compliance with the Columbus City Code and has been declared a public nuisance, it is now subject to abatement. (*Id.*)

The Premises is in immediate danger of being lost, materially injured, diminished in value, or squandered if the Court does not grant this Joint Motion and appoint a receiver to manage and sell the Premises.

II. Background.

A. The Owners Breach the Loan Documents.

On or about August 26, 2020, Apex Colonial executed a Promissory Note in the principal amount of \$15,500,000 (the “Promissory Note”) in favor of EF SBC 2015-2 LLC (“EF SBC”). (Promissory Note, attached as Exhibit 1 to the Meagher Aff.) In connection with the Promissory Note, the Owners also executed an Environmental Compliance and Indemnity Agreement (“Environmental Agreement”) in favor of EF SBC. (Envtl. Agr., attached as Exhibit 2 to the Meagher Aff.) Apex Colonial secured its obligations under the Promissory Note by executing an Open-End Mortgage, Security Agreement and Fixture Filing (the “Mortgage”), a Pledge and Security Agreement (“Pledge”), and an Assignment of Leases and Rents (the “Assignment of Rents”) in favor of EF SBC. (Mortgage, Pledge, & Assignment of Rents, attached as Exhibits 3,

² The Environmental Court’s Stipulated Order for Permanent Injunctive Relief in *Klein* (the “*Klein* Stipulated Order”) is attached as Exhibit 9 to the Affidavit of Katherine Meagher, which is Exhibit 1 to this Joint Motion (“Meagher Aff.”).

4, and 5, respectively, to the Meagher Aff.) And to further secure Apex Colonial's obligations under the Promissory Note, Puretz and Zarum each executed a Guaranty of Payment and Performance (the "Guaranty") in favor of EF SBC (attached as Exhibit 6 to the Meagher Aff.)

On or about September 23, 2020, EF SBC and EFM entered into an Assignment of Open-End Mortgage, Security Agreement and Fixture Filing and Related Loan Documents (the "Mortgage Assignment") in which EF SBC assigned all of its right, title, and interest in the Promissory Note, Environmental Agreement, Mortgage, Pledge, Assignment of Rents, and Guaranty, among other documents (collectively, the "Loan Documents"), to EFM. (Mortgage Assignment, attached as Exhibit 7 to the Meagher Aff.)

On June 29, 2021, EFM provided notice (the "Default Notice") to the Owners that one or more events of default have occurred under the Loan Documents, including the failure to make monthly payments to EFM under the Promissory Note, the failure to pay real estate taxes when due, the commencement and continuation of litigation by the City against the Owners, and the attachment of various liens and encumbrances to the Premises. (Default Notice, attached as Exhibit 8 to the Meagher Aff.) EFM informed the Owners that if the total balance due under the Promissory Note was not paid immediately, then EFM intended to, among other things, enforce its rights and remedies under the Loan Documents, initiate litigation to collect the full amount due under the Promissory Note, and foreclose the Mortgage. (*Id.*)

The Owners have defaulted on their obligations under the Loan Documents and, to date, have failed to cure these defaults or pay the amount owed under the Promissory Note. (Meagher Aff. ¶ 23–24.)

B. The City of Columbus Sues the Owners and Others for Code Violations and the Creation of a Public Nuisance at the Premises.

On April 14, 2021, the City sued Apex Colonial, Puretz, Zarum, and others in *Klein* seeking

an order from the Environmental Court that, among other things, the Premises violates housing and health code provisions and constitutes a public nuisance. The City requested that the Court order abatement of the code violations through methods including the potential demolition of all structures on the Premises. (*Klein* Compl. at 35.)³

The City alleges that in the fall of 2019 its Department of Code Enforcement (“Code Enforcement”) inspected the Premises and issued more than 400 notices of code violations. (*Klein* Compl. ¶ 42–43.) The City alleges that Code Enforcement conducted another inspection on March 21, 2020, after the Premises experienced severe flooding leaving several occupied units, hallways, and parking lots under water. (*Id.* ¶ 54–55.) Following that inspection, the City issued three emergency orders declaring the lower levels of several buildings uninhabitable. (*Id.* ¶ 55.)

Apex Colonial obtained ownership of the Premises on March 26, 2020. (*Klein* Compl. ¶ 9, 57.) The City alleges that since then the Premises has remained in violation of numerous housing, environmental, and zoning requirements. In December 2020, approximately 200 code violations remained outstanding at the Premises. (*Id.* ¶ 58.) And throughout the winter of 2021, the City alleges that it continued to receive a plethora of new complaints from tenants about the conditions of the Premises. (*Id.* ¶ 60.)

The City alleges that Code Enforcement resumed code compliance inspections in March 2021 and found 182 code violations at the Premises between March 8 and 10, 2021. (*Klein* Compl. ¶ 61, 64.) Several of the violations that the City observed during the March 2021 inspection were the same violations noted during the initial October 2019 inspection. (*Id.* ¶ 65.)

On or about April 7, 2021, security officers at the Premises observed additional unsanitary conditions at several units, including black mold, visible blood stains, and human feces. (*Klein*

³ The City’s Complaint for Preliminary and Permanent Injunctive Relief in *Klein* (the “*Klein* Complaint”) is attached as Exhibit 10 to the Meagher Aff.

Compl. ¶ 66.) The security officers noted that there were also several vacant and unsecured units at the Premises, which had to be cleared of squatters daily. (*Id.*) The security officers thought the conditions at one of the buildings on the Premises were so unsanitary that they recommended relocating all of the tenants from that building. (*Id.* ¶ 67.)

The City further alleges that under Apex Colonial’s ownership, police calls and violence are common at the Premises. According to the City, the Premises is known by the Columbus Division of Police (“CPD”) “as a crime ridden property notorious for the extremely high level of violent crime that permeates the apartment complex and plagues the lives of both its residents and the surrounding community.” (*Klein* Compl. ¶ 68.) The City alleges that between July 2019 and February 2021, CPD was called to the Premises approximately 1,699 times. (*Id.* ¶ 83.) Many of those calls were for incidents of violence. (*Id.*) A new security team was purportedly hired for the Premises in the spring of 2020, and several CPD officers were hired to conduct special duty at the Premises in September 2020. (*Id.* ¶ 76, 82.) According to the City, however, Apex Colonial stopped paying for this additional security in late 2020. (*Id.* ¶ 84.) On November 25, 2020, the CPD suspended special duty services at the Premises due to this non-payment. (*Id.* ¶ 85.) And the new, private security team suspended its services at the Premises for over a week in the winter of 2021 because of non-payment. (*Id.* ¶ 87, 91.)

C. The Environmental Court Finds that the Owners Are Guilty of Maintaining a Public Nuisance at the Premises.

The Owners has since stipulated to many of the City’s allegations—and to their failure to remedy the safety issues and code violations at the Premises. In the Stipulated Order for Permanent Injunctive Relief recently entered in *Klein*, the Owners stipulated, among other things, that on July 30, 2021, the City’s Department of Code Enforcement “completed compliance inspections at the Premises and observed minimal work in progress.” (*Klein* Stipulated Order at 5.) During the July

30 inspection, Code Enforcement observed 201 outstanding code violations at the Premises. (*Id.*) Following the July 30 inspection, the City also issued 13 new emergency notice violations for vacant and unsecured units at the Premises and for missing or inoperable smoke detectors. (*Id.*) Code Enforcement observed over 100 vacant and unsecured units at the Premises during its inspection. (*Id.*)

Based on the Owners' stipulations and the facts alleged in the City's Complaint, the Environmental Court found, among other things, that the Premises is not in compliance with the Columbus City Code, the Owners are guilty of maintaining a public nuisance at the Premises, and that the Premises is subject to abatement. (*Klein Stipulated Order* at 6–7.)

III. Law and Argument.

A. The Court Should Appoint a Receiver to Protect the Premises and Safeguard the Rights and Interests of EFM and the Interested Parties.

The Premises is in immediate danger of being lost, materially injured, diminished in value, or squandered, and Movants therefore request that the Court appoint a receiver pursuant to R.C. 2735.01 to manage and sell the Premises.

When considering whether to appoint a receiver, courts:

[T]ake into account all the circumstances and facts of the case, the presence of conditions and grounds justifying the relief, the ends of justice, the rights of all parties interested in the controversy and subject matter, and the adequacy and effectiveness of other remedies.

State ex rel. Celebrezze v. Gibbs, 60 Ohio St.3d 69, 73, fn.3, 573 N.E.2d 62 (1991), quoting 65 American Jurisprudence 2d, Receivers, Sections 19, 20, at 873, 874 (1972). Receiverships are appropriate where “the failure to [appoint a receiver] would place the petitioning party in danger of suffering an irreparable loss or injury.” *Equity Ctrs. Dev. Co. v. S. Coast Ctrs., Inc.*, 83 Ohio App.3d 643, 649–50, 615 N.E.2d 662 (8th Dist.1992).

The statutory authority for the appointment of a receiver comes from R.C. 2735.01. As relevant here, a court may appoint a receiver under that statute:

In an action by a mortgagee, for the foreclosure of the mortgagee's mortgage and sale of the mortgaged property, when it appears that the mortgaged property is in danger of being lost, removed, materially injured, diminished in value, or squandered, or that the condition of the mortgage has not been performed, and either of the following applies:

- (a) The property is probably insufficient to discharge the mortgage debt.
- (b) The mortgagor has consented in writing to the appointment.

R.C. 2735.01(A)(2).

Here, Apex Colonial consented in writing to the appointment of a receiver upon its default under the Mortgage. (Meagher Aff., Ex. 3, Mortgage Section C.2(b).) The Owners have now defaulted on their obligations under the Loan Documents and the Premises is in danger of being lost, materially injured, diminished in value, or squandered. (Meagher Aff. ¶ 23–24, 28.) The Owners defaulted on their obligations under the Loan Documents by, among other things, failing to make monthly payments to EFM under the Promissory Note, failing to pay real estate taxes when due, failing to properly care for and keep the Premises in good condition and repair, failing to comply with all laws, ordinances, regulations, or governmental orders affecting the Premises, and allowing the attachment of various liens and encumbrances to the Premises without posting a bond or indemnification satisfactory to EFM. (*Id.* ¶ 23, *see also id.*, Ex. 3, Mortgage Sections C.1(a), (j), (l), (o), Ex. 6, Guaranty Sections 1, 2.)

These defaults, and in particular the Owners' failure to pay the real estate taxes for the Premises, alone establish that the Premises is in danger of being lost, materially injured, diminished in value, or squandered. The Environmental Court's findings in *Klein* reinforce that conclusion. (*Klein* Stipulated Order at 6–7.)

In situations like this, where a property owner has created a public nuisance or mismanaged the property, courts have found that appointing a receiver is proper. *See State ex rel. Olmsted Falls v. Bowman*, 8th Dist. No. 104154, 2016-Ohio-5851, ¶ 1, 7 (upholding an asset sale conducted by a receiver appointed to sell property subject to a nuisance action); *State ex rel. Petro v. Gold*, 166 Ohio App.3d 371, 2006-Ohio-943, 850 N.E.2d 1218, ¶ 67–70 (10th Dist.) (upholding the trial court’s appointment of a receiver where there was evidence that the nonprofit at issue was mismanaged); *City of Wauseon v. Plassman*, 6th Dist. No. F-95-022, 1996 WL 354881, at *3–4 (June 28, 1996) (upholding the appointment of a receiver by the common pleas court where the property owners failed to abate a public nuisance on the property).

EFM is in danger of suffering an irreparable injury to its interest in the Premises if this Court does not promptly appoint a receiver. Hundreds of code violations were present at the Premises when Apex Colonial acquired the Premises in March 2020. (*Klein* Stipulated Order at 3–4.) Those violations related to, among other things, bed bugs, rodent infestation, water damage, lack of utilities, prohibited occupancy, missing/inoperable smoke detectors, fire damage, broken windows, bare and rotted wood, detached and rotten door framing, damaged or missing rain carriers, missing downspouts, debris filled gutters, mortar voids and damaged concrete, potholes, loose/damaged siding, exposed wiring, broken/damaged light fixtures, and unsecured vacant units. (*Id.* at 4–5.) The Owners have had over a year to bring the Premises into compliance with the Columbus City Code. And they have had nearly four months to bring the Premises into compliance since the City filed its lawsuit in the Environmental Court. However, as of July 30, 2021, there were still more than 200 code violations at the Premises. (*Id.* at 5.) And, to date, the Owners have still failed to pay the real estate taxes for the Premises or cure any of their other defaults under the Loan Documents. (Meagher Aff. ¶ 24.)

The Environmental Court provided the Owners and other defendants in *Klein* until September 2, 2021 to bring the Premises into compliance with all applicable provisions of the Columbus City Code. (*Klein* Stipulated Order at 13.) But this Court should not wait until then to order the appointment of a receiver. The Owners have established through their inaction and mismanagement that they are incapable of meeting the Environmental Court’s deadline, curing their defaults under the Loan Documents, or properly managing the Premises.

The Owners had an opportunity to solve these issues at the Premises but failed to do so—even after being sued by the City and threatened with the appointment of a receiver and the demolition of all structures on the Premises. (*See Klein* Compl. at 35.)

The Court should promptly appoint a receiver to operate, manage, and prepare the Premises for sale. Promptly appointing a receiver will benefit all interested parties, including community members and residents. An experienced and well-qualified receiver, like the one proposed by Movants, will increase, or at least preserve, the value of the Premises and facilitate the sale of the Premises to a new, competent owner.

B. The Proposed Receiver, Broker, Property Manager, and Counsel for the Receiver Are Experienced and Well Qualified.

1. The Court Should Appoint Robert J. Weiler, Sr. as the Receiver.

Movants propose that the Court appoint Robert J. Weiler, Sr. (“Mr. Weiler”) as the receiver for the Premises. Mr. Weiler is an experienced real estate professional and has served as a receiver in numerous other matters over his lengthy career. (Affidavit of Mr. Weiler, attached as Exhibit 2 to the Joint Motion (“Weiler Aff.”) ¶ 4.) Mr. Weiler is an Ohio resident and currently serves as the Chairman of the Board of The Robert Weiler Company, a corporation formed under Ohio law. (Affidavit of Robert J. Weiler, Sr. (*Id.* ¶ 5–6.) He holds a doctoral degree in finance from The Ohio State University and received MAI and SREA designations from the Appraisal Institute. (*Id.* ¶ 7.)

Mr. Weiler has served as the Chairman of the Ohio Real Estate Appraiser Board and as the President of the Ohio Chapter of the Appraisal Institute and the Columbus Board of Realtors. (*Id.* ¶ 8.)

Mr. Weiler does not have any personal or financial interest in the Premises and is a disinterested party to this matter. (Weiler Aff. ¶ 9.) For his time spent serving as the receiver of the Premises, Mr. Weiler will be compensated \$400 per hour. (*Id.* ¶ 10.) Mr. Weiler's entire fee arrangement, including all expense reimbursements and any commissions contemplated for leasing or selling property, is set forth in Exhibit 1 to Mr. Weiler's Affidavit.

Mr. Weiler acknowledges that, upon accepting the appointment as the receiver over the Premises, he will comply with the requirements of Local Rule 66.04(C). (Weiler Aff. ¶ 12.)

Mr. Weiler's proposed scope of work and duties are enumerated in the attached Proposed Order Appointing Receiver ("Proposed Order"). (Proposed Order, attached as Exhibit 3 to the Joint Motion, at 11–22.)

Although Apex Colonial borrowed at least \$15.5 million to purchase the Premises, given Apex Colonial's mismanagement, the Premises is likely worth significantly less than that amount currently. (Meagher Aff. ¶ 29.) Movants therefore request that the receiver be required to post a surety bond of \$500.00. This bond amount is reasonable given the probable current value of the Premises and the unlikelihood of an experienced and well-qualified receiver, such as Mr. Weiler, damaging the Premises.

2. The Court Should Permit Mr. Weiler to Hire The Robert Weiler Company as His Broker.

The proposed order appointing Mr. Weiler as receiver anticipates that the Premises will be marketed and potentially sold during the course of these proceedings. To timely place the Premises on the market, and for judicial economy, the Mr. Weiler should be granted authority to immediately

employ a broker to market and sell the Premises, subject to Court order. Specifically, the Court should permit Mr. Weiler to hire The Robert Weiler Company (the “Broker”) as his real estate broker in this matter. If the Court appoints Mr. Weiler as receiver, Movants anticipate that Mr. Weiler will enter into the attached Exclusive Right to Sell or Lease Listing Contract (the “Listing Contract”) with The Robert Weiler Company (attached as Exhibit 3 to the Weiler Aff.).

Mr. Weiler desires to employ the Broker based on its experience with real property such as the Premises in this case. The Broker has extensive experience in acting as real estate agent in the way it will serve in relation to the Premises. The Broker and all its agents hold in good standing all required credentials to fulfill this role. The Broker, being the real estate company affiliated with Mr. Weiler, understands the receivership process and can work through the sale process outlined by Ohio law and the proposed order appointing receiver.

The Broker is the real estate company that is affiliated with Mr. Weiler and he serves as its Chairman of the Board.⁴ Neither the Broker nor its agents hold or represent an interest adverse to the Receiver, any party in this case, or the receivership estate; the Broker is “disinterested.” Neither the Broker nor any of its employees have any prior business relationship with the parties to this case other than in conjunction with this case. The Broker has current insurance coverage as required for a similarly-situated Broker under Ohio law. Any money received by Broker in relation to the Property will be turned over to the Receiver. The Broker will not, under any circumstances, directly or indirectly purchase, acquire, or accept any interest in the Property or other assets of the receivership estate.

As an additional consideration, Mr. Weiler believes that hiring the Broker to market the Premises will allow for the maximum amount of recovery to the receivership estate due to the

⁴ Because Mr. Weiler is affiliated with the Broker, no separate affidavit is being provided for the Broker.

Broker's particular experience with this type of property. In addition, hiring the Broker will allow for cost savings. Because Mr. Weiler will be able to serve in the capacity of receiver and also manage certain operations of the Broker, certain cost savings will accrue to the receivership estate. In particular, hourly fees that Mr. Weiler would have incurred in interfacing with a third-party broker can be avoided because of the dual capacity of service. Mr. Weiler will not charge any hourly rates for time that would typically be encapsulated in a service he completes and is compensated for in his roles with the Broker. As a result, the dual role of Receiver/Broker will bring cost savings to the receivership estate. Finally, the familiarity of the Broker and its agents with the receivership process is a substantial advantage over other brokerage options; the Broker understands the process, the inherent risks, and the need for Court supervision and authority.

3. The Court Should Permit Mr. Weiler to Hire Hayes Gibson Property Services, LLC as His Property Manager.

The Court should permit Mr. Weiler to hire Hayes Gibson Property Services, LLC ("Hayes Gibson") as his property manager for the Premises. If the Court appoints Mr. Weiler as receiver, Movants anticipate that Mr. Weiler will enter into the attached Property Management Agreement (the "PMA") with Hayes Gibson. (attached as Exhibit 2 to the Weiler Aff.).

With over 65 years of experience, Hayes Gibson is a leading expert in the multifamily affordable housing industry. (Affidavit of Alexandra S. Jackiw, attached as Exhibit 4 to the Joint Motion ("Jackiw Aff.") ¶ 6.) Hayes Gibson manages over 12,000 units in over 100 cities and 16 states. (*Id.* ¶ 7.) Hayes Gibson has expertise in property operations, financial management, regulatory compliance, facilities maintenance, value recovery, and resident and community relations. (*Id.* ¶ 8.) All of Hayes Gibson's necessary licenses are in good standing. (*Id.* ¶ 9.)

Hayes Gibson's usual and customary management fee is 4.0% of gross collections, a \$15.00 per unit start-up fee, and a 5.0% capital supervision fee for capital work in excess of

\$25,000. (Jackiw Aff. ¶ 10.) And its proposed fee for managing the Premises is the greater of 4.0% of gross collections or \$15,000 per month, a \$7,500 start-up fee, and a 5.0% capital supervision fee for capital work in excess of \$25,000. (*Id.* ¶ 11.) In the year prior to the filing of this Joint Motion, Hayes Gibson has not received any fees from Apex Colonial, any persons or parties closely related to Apex Colonial, or any persons or parties known to be adverse to Apex Colonial and having a material claim in the receivership. (*Id.* ¶ 12.) Hayes Gibson affirms that gross proceeds of any sale or other transaction conducted by it in connection with the receivership will be immediately turned over to the receiver or placed in a separate trust account. (*Id.* ¶ 13.)

Hayes Gibson checked this engagement for potential conflicts and did not identify any. (Jackiw Aff. ¶ 14.) Hayes Gibson will avoid any conflicts of interest in connection with any work for the receivership. (*Id.* ¶ 15.) And Hayes Gibson will not, under any circumstances, directly or indirectly purchase, acquire, or accept any interest in any property it manages, appraises, or sells through the receivership. (*Id.* ¶ 16.)

4. The Court Should Permit Mr. Weiler to Hire Allen Stovall Neuman & Ashton LLP as Legal Counsel.

The Court should also permit Mr. Weiler to hire Allen Stovall Neuman & Ashton LLP (“Allen Stovall”), and attorney James A. Coutinho in particular, as legal counsel to represent him and the receivership estate in this matter.

Mr. Coutinho and the other attorneys at Allen Stovall have significant experience in receivership cases involving real estate and can address all legal needs of the Receiver. (Affidavit of James A. Coutinho, attached as Exhibit 5 to the Joint Motion (“Coutinho Aff.”) ¶ 6.) Aside from his experience representing receivers generally in this Court, Mr. Coutinho is also counsel in numerous real property receiverships involving nuisance matters that have arisen before the Environmental Court, and he is familiar with the prosecutor team with the City that is assigned to

this property. (*Id.* ¶ 7.) His familiarity with the receivership process and with nuisance issues will be an asset in this case.

As to compensation, Allen Stovall proposes that its fees be charged at a discounted rate that is used when it represents court fiduciaries. (Coutinho Aff. ¶ 8.) That discounted rate is a \$30 per hour reduction in each attorney's standard hourly rates. (*Id.* ¶ 9.) Those rates are set forth in the table below. (*Id.* ¶ 10.) This proposed compensation is reasonable given the level of experience required to handle these matters and the ongoing cost of legal services for this locality. (*Id.*)

Attorney	Standard Hourly Rate	Discounted Fiduciary Rate
Richard K. Stovall, Partner	\$425.00	\$395.00
James A. Coutinho, Partner	\$350.00	\$320.00
Tom Shafirstein, Associate	\$285.00	\$255.00
Bradley Hemmer, Associate	\$225.00	\$195.00
Michele Doan, Paralegal	\$150.00	\$120.00

Mr. Coutinho and the other attorneys at Allen Stovall are licensed to practice law in Ohio and are in good standing with the Supreme Court of Ohio. (Coutinho Aff. ¶ 11.) Allen Stovall maintains professional liability insurance in an amount at least equal to the minimum coverage required by Rule 1.4 of Ohio Rules of Professional Conduct. (*Id.* ¶ 12.)

Allen Stovall checked this engagement for potential conflicts and did not identify any. (Coutinho Aff. ¶ 14.) In the year prior to the filing of this Joint Motion, Allen Stovall has not received any fees from Apex Colonial, any persons or parties closely related to Apex Colonial, or any persons or parties known to be adverse to Apex Colonial and having a material claim in the receivership. (*Id.* ¶ 13.) Allen Stovall will avoid any conflicts of interest in connection with any work for the receivership. (*Id.* ¶ 15.)

Allen Stovall affirms that gross proceeds of any sale or other transaction conducted by it in connection with the receivership will be immediately turned over to the receiver or placed in a

separate trust account. (Coutinho Aff. ¶ 16.) Allen Stovall will not, under any circumstances, directly or indirectly purchase, acquire, or accept any interest in any property it manages, appraises, or sells through the receivership. (*Id.* ¶ 17.) Allen Stovall has not received a retainer or other compensation yet for preparatory work relative to the receivership. (*Id.* ¶ 18.)

Mr. Weiler, the Broker, Hayes Gibson, and Allen Stovall are experienced, well qualified, and disinterested and should serve, respectively, as the receiver, the property broker, the property manager for the Premises, and legal counsel for the receivership.

IV. Conclusion.

For all these reasons, Movants respectfully request that the Court grant this Joint Motion and issue the attached Proposed Order appointing Mr. Weiler as the receiver for the Premises and permitting Mr. Weiler to hire The Robert Weiler Company as his broker, Hayes Gibson as his property manager, and Allen Stovall as his legal counsel. A proposed Order Appointing Receiver is attached hereto for the Court's consideration.

Respectfully submitted,

/s/ Tiara N. Ross

Tiara N. Ross (0089583)
Sarah C. Pomeroy (0093578)
Assistant City Attorneys
375 South High Street, 17th Floor
Columbus, Ohio 43215
Phone: (614) 645-0781
tnross@columbus.gov
scpomeroy@columbus.gov

*Counsel for Interested Party City of
Columbus*

/s/ Joseph C. Pickens

Joseph C. Pickens (0076239)
jpickens@taftlaw.com
James V. Maniace (0003178)
jmaniace@taftlaw.com
Jonathan N. Olivito (0092169)
jolivito@taftlaw.com
Taft Stettinius & Hollister LLP
65 East State Street, Suite 1000
Columbus, Ohio 43215
Telephone: (614) 221-2838
Facsimile: (614) 221-2007

Counsel for Plaintiff EFM Transfer Agent, LLC

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing was served via U.S. Mail this 27th day of August 2021, on the following:

Katherine Ferguson
100 S 4th Street
Columbus, Ohio 43215
*Counsel for Apex Colonial OH LLC, Oron
Zarum, and Aron Puretz*

Ryan Lee Thomas
503 S Front Street, Suite 250
Columbus, Ohio 43215
Counsel for Pierce Carpet Cleaning, LLC

Charles R. Ellis
Assistant Prosecuting Attorney
373 S High Street, 17th Floor
Columbus, Ohio 43215
*Counsel for Cheryl Brooks Sullivan, Franklin
County Treasurer*

Garver Asset Protection, LLC
c/o Nicholas R. Garver
22 Valley View Drive SE
Heath, Ohio 43056

Tiara N. Ross
Sarah C. Pomeroy
Assistant City Attorneys
375 South High Street, 17th Floor
Columbus, Ohio 43215
Counsel for City of Columbus

Keybank National Association
127 Public Square, Suite 5600
Cleveland, Ohio 44114

Madison Exchange, LLC
885 Second Avenue
New York, New York 10017

Colonial Property Holdings, LLC
c/o National Service Information, Inc.
145 Baker Street
Marion, Ohio 43302

/s/ Joseph C. Pickens

Joseph C. Pickens

Exhibit 1

**IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO**

EFM TRANSFER AGENT, LLC,	:	
	:	
Plaintiff,	:	Case No.
	:	
v.	:	Judge
	:	
APEX COLONIAL OH LLC, et al.,	:	
	:	
Defendants.	:	

AFFIDAVIT OF KATHERINE MEAGHER

STATE OF <u>New Jersey</u>)	
)	ss:
COUNTY OF <u>Bergen</u>)	

I, Katherine Meagher, having been duly sworn by the undersigned Notary, state under oath that the following is true to the best of my personal knowledge:

1. I am the Vice President of Ellington Management Group, which is the management representative of investors in and authorized signatory of EFM Transfer Agent, LLC (“EFM”).
2. I am authorized to make the statements below on behalf of EFM.
3. I make this Affidavit in support of the Joint Motion of Plaintiff EFM Transfer Agent, LLC and Interested Party City of Columbus (the “City”) for the Appointment of a Receiver (the “Joint Motion”).
4. I am familiar with the facts set forth herein, which are based on my personal knowledge and review of EFM’s files.
5. The real property at issue in this case is a multi-unit apartment complex commonly known as Colonial Village Apartments, Franklin County Permanent Parcel Nos. 010-

134510, 010-134511, 010-134512, 010-134513, 010-134514, 010-134515, 010-134516, 010-134517, 010-134518, 10-134519, 010-134520, 010-134521, 010-134522, 010-134523, 010-134524, 010-134525, 010-134526, 010-134527, 010-134528, 010-134529, 010-134530, 010-010134531, 010-134532, 010-134533, 010-134534, 010-134535, 010-134536, 010-137570, 010-137571, 010-137572, 010-137573, 010-137574, 010-137576 and 010-137577. This property is situated in the City of Columbus, Franklin County, Ohio, and is hereinafter referred to as the “Premises.”

6. On or about August 26, 2020, Defendant Apex Colonial OH LLC (“Apex Colonial”) executed a Promissory Note in the principal amount of \$15,500,000 (the “Promissory Note”) in favor of EF SBC 2015-2 LLC (“EF SBC”).

7. Attached as **Exhibit 1** is a true and accurate copy of the Promissory Note.

8. On or about August 26, 2020, in connection with the Promissory Note, Defendants Apex Colonial, Aron Puretz (“Puretz”), and Oron Zarum (“Zarum”) (collectively, the “Owners”) executed an Environmental Compliance and Indemnity Agreement (“Environmental Agreement”) in favor of EF SBC.

9. Attached as **Exhibit 2** is a true and accurate copy of the Environmental Agreement.

10. On or about August 28, 2020, in order to secure its obligations under the Promissory Note, Defendant Apex Colonial executed and delivered an Open-End Mortgage, Security Agreement and Fixture Filing, recorded on August 28, 2020, as Instrument Number 202008280128328 with the Franklin County, Ohio Recorder’s Office (the “Mortgage”), wherein Apex Colonial granted to EF SBC an interest in real property owned by Apex Colonial and referred to in this case as the Premises.

11. Attached as **Exhibit 3** is a true and accurate copy of the Mortgage.

12. On or about August 28, 2020, in connection with the Promissory Note, Defendant Apex Colonial executed a Pledge and Security Agreement (“Pledge”) in favor of EF SBC.

13. Attached as **Exhibit 4** is a true and accurate copy of the Pledge.

14. On or about August 28, 2020, in order to further secure its obligations under the Promissory Note, Defendant Apex Colonial executed and delivered an Assignment of Leases and Rents, recorded on August 28, 2020, as Instrument Number 202008280128329 with the Franklin County, Ohio Recorder’s Office (the “Assignment of Rents”), wherein Apex Colonial granted to EF SBC the right, title, and interest in any and all present or future leases, tenancies, rents, profits, and other income or payments due or payable to Apex Colonial as the result of any use, possession, or occupancy of all or any portion of the Premises.

15. Attached as **Exhibit 5** is a true and accurate copy of the Assignment of Rents.

16. On or about August 26, 2020, Defendants Puretz and Zarum each executed a Guaranty of Payment and Performance in favor of EF SBC (the “Guaranty”) to further secure Defendant Apex Colonial’s obligations under the Promissory Note.

17. Attached as **Exhibit 6** are true and accurate copies of the Guaranty.

18. On or about September 23, 2020, EF SBC and EFM entered into an Assignment of Open-End Mortgage, Security Agreement and Fixture Filing and Related Loan Documents (the “Mortgage Assignment”) in which EF SBC assigned all of its right, title, and interest in the Promissory Note, Environmental Agreement, Mortgage, Pledge, Assignment of Rents, and Guaranty, among other documents (collectively, the “Loan Documents”), to EFM.

19. Attached as **Exhibit 7** is a true and accurate copy of the Mortgage Assignment.

20. On June 29, 2021, EFM provided notice (the “Default Notice”) to the Owners that one or more events of default have occurred under the Loan Documents, including the failure to

make monthly payments to EFM under the Promissory Note, the failure to pay real estate taxes when due, the commencement and continuation of litigation by the City against the Owners, and the attachment of various liens and encumbrances to the Premises.

21. EFM informed the Owners that if the total balance due under the Promissory Note was not paid immediately, then EFM intended to, among other things, enforce its rights and remedies under the Loan Documents, initiate litigation to collect the full amount due under the Promissory Note, and foreclose the Mortgage.

22. Attached as **Exhibit 8** is a true and accurate copy of the Default Notice.

23. The Owners defaulted on their obligations under the Loan Documents by, among other things, failing to make monthly payments to EFM under the Promissory Note, failing to pay real estate taxes when due, failing to properly care for and keep the Premises in good condition and repair, failing to comply with all laws, ordinances, regulations, or governmental orders affecting the Premises, and allowing the attachment of various liens and encumbrances to the Premises without posting a bond or indemnification satisfactory to EFM.

24. As of the date this Affidavit is signed, the Owners have failed to pay the real estate taxes for the Premises, failed to cure any of the other defaults under the Loan Documents, and failed to pay the amount owed under the Promissory Note.

25. Attached as **Exhibit 9** is a true and accurate copy of the Stipulated Order for Permanent Injunctive Relief issued by the Franklin County Municipal Court, Environmental Division in *State ex rel. Klein v. Apex Colonial OH LLC, et al.*, Franklin Cty. Municipal Ct., Envntl. Div. No. 2021 EVH 60155 (“*Klein*”).

26. Attached as **Exhibit 10** is a true and accurate copy of the City’s Complaint for Preliminary and Permanent Injunctive Relief in *Klein*.

27. In Section C.2.(b) of the Mortgage, Defendant Apex Colonial consented in writing to the appointment of a receiver upon its default under the Mortgage.

28. Because of the Owners' mismanagement and default on their obligations under the Loan Documents, the Premises is in danger of being lost, materially injured, diminished in value, or squandered.

29. Although Apex Colonial borrowed at least \$15.5 million to purchase the Premises, given Apex Colonial's mismanagement, the Premises is likely worth significantly less than that amount currently.

Further affiant sayeth naught.

K Meagher
Signature

Katherine Meagher
Printed Name

Sworn to before me and subscribed in my presence this 25th day of August 2021.

Theresa Braun
Notary Public

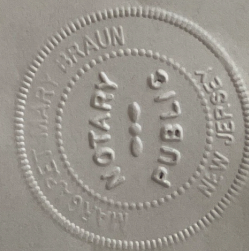


EXHIBIT 1

PROMISSORY NOTE

\$15,500,000.00

August __, 2020

FOR VALUE RECEIVED, the undersigned APEX COLONIAL OH LLC, a Delaware limited liability company ("Maker" and sometimes also referred to as "Borrower"), whose address is 2365 Nostrand Avenue, Brooklyn, New York 11210, promises to pay to the order of EF SBC 2015-2 LLC, a Delaware limited liability company ("Lender" and/or "Holder"), with an address of 53 Forest Avenue, Old Greenwich, CT 06870, the sum of Fifteen Million Five Hundred Thousand and No/100 Dollars (\$15,500,000.00) (the "Loan") payable as follows:

Interest Rate:

a. A rate per annum equal to the LIBOR 90-Day Rate (as defined below), plus 7.94% (the "LIBOR Margin") (collectively with any interest rate options provided herein defined as the "Interest Rate"), with a floor Interest Rate of 8.25% (the "Floor Rate").

b. As used herein, "LIBOR 90-Day Rate" means the rate of interest per annum equal to the London Interbank Offered Rate ("LIBOR") for ninety (90) day U.S. dollar deposits as published in the "Money Rates" column of the local edition of The Wall Street Journal. If such rate is no longer available, Lender shall choose a new LIBOR Rate (or if LIBOR is no longer available, an alternative index) based on comparable information. If more than one rate is quoted, Lender shall use the arithmetic average of such rates. This rate will be effective on and from the date hereof, based on the most recent rate information available, and will be effective until August 31, 2020. On September 1, 2020, the interest rate shall be readjusted to the current LIBOR 90-Day Rate plus the LIBOR Margin based on the most recent rate information available on the date that the interest rate is adjusted and such rate shall be effective until September 30, 2020. The rate shall thereafter be adjusted on the first (1st) day of each calendar month thereafter at the then current LIBOR 90-Day Rate plus the LIBOR Margin based on the most recent rate information available on the date that the interest rate is adjusted. In the event that LIBOR is no longer available and Lender must select an alternative index, Lender shall use commercially reasonable efforts (including adjustment to the LIBOR Margin as necessary) so as to keep the Interest Rate resulting from such alternative index consistent with the Interest Rate determined based on LIBOR, subject in any event to the Floor Rate.

c. Interest as aforesaid (or default interest as provided in this Note) shall be calculated at the rate of 1/360 of the annual rate of interest for each day that principal is outstanding (i.e., interest will accrue and be paid on the actual number of calendar days elapsed from the date hereof based on a 360 day year). The calculation of interest on this basis will result in a higher interest rate than if such interest rate were calculated for a three hundred sixty-five (365) day period.

Payment Terms:

Interest on this Promissory Note (this "Note") shall be paid in advance on the date hereof for the period from and including the date hereof through and including August 31, 2020 at the Interest Rate (the "Initial Interest Payment"). Thereafter, Maker shall make interest payments, in arrears, on the first (1st) day of each month commencing October 1, 2020, with a final payment on the Maturity Date. To the extent the amount of interest payments to be made by Borrower vary from that previously made, Lender shall use commercially reasonable efforts to provide Maker with ten days' notice of the amount of the monthly payment consistent with the Interest Rate. In the event Lender does not provide Maker with such notice, Maker shall not be deemed to be in default provided Maker makes a payment equal to the floor Interest Rate (and pays any resulting shortfall within five (5) business days of notification of the same). Unless this Note is otherwise accelerated in accordance with the terms and conditions hereof, the entire outstanding principal balance of this Note plus all accrued interest shall be due and payable in full on September 1, 2021 (the "Maturity Date"). For clarification purposes, the entire amount of the Loan (being \$15,500,000.00) shall be deemed disbursed on the date hereof, and interest shall accrue on such entire amount of the Loan from the date hereof, irrespective of whether certain amounts of the Loan are withheld on the date hereof as set forth below.

In addition to the Initial Interest Payment, on the date hereof, Lender shall withhold from the proceeds of the Loan an amount equal to the amount of interest payable by Maker for a period of four (4) months, calculated using the Floor Rate (the "Interest Reserve"). The Interest Reserve shall be deposited in escrow with Lender and held as security for Maker's obligations under this Note and the other Loan Documents (subject to the terms below). The Interest Reserve shall not constitute a trust fund and may be commingled with other monies held by Lender. No earnings or interest on the Interest Reserve shall be payable to Maker. In the event of a default by Maker for failure to make interest payments required herein, Lender shall have the option, at its discretion (in addition to any other rights and remedies available to Lender), to draw from the Interest Reserve and apply to interest payments not timely made. The Interest Reserve shall at all times during the term of the Loan have at least an amount equal to one (1) month of interest payable by Maker (the "Minimum Required Interest Reserve"), and should the Interest Reserve at any time have less than an amount equal to the Minimum Required Interest Reserve, Maker shall, not later than five (5) business days after notification from Lender, deposit with Lender an amount sufficient to restore the Interest Reserve to an amount equal to the Minimum Required Interest Reserve. Provided that there exists no Event of Default under any of the Loan Documents, Maker may elect to have the amount of the Interest Reserve in excess of the Minimum Required Interest Reserve applied toward Maker's obligation for the final three (3) regular payments of interest due from Maker prior to the Maturity Date (or portions thereof until such excess is fully applied, with Maker being responsible for the payment of any deficiency). In the event there are any funds remaining in the Interest Reserve on the Maturity Date, such amounts shall be credited to payment of the Loan.

In addition to the Interest Reserve, and in addition to the impounds for real estate taxes and insurance premiums (as applicable) described in the Mortgage (as defined below), on the date hereof, Lender shall withhold from the proceeds of the Loan a sum reasonably determined by Lender that would equal the amount of the real estate taxes assessed against the Property (as defined below) for a period of four (4) months (the "Tax Reserve"). No earnings or interest on the Tax Reserve shall be payable to or by Maker. Provided there exists no Event of Default under any of the Loan Documents, Lender shall draw from the Tax Reserve (in addition to the monthly

impounds for real estate taxes pursuant to the Mortgage) to make payments of real estate taxes as the same become due. Any funds remaining in the Tax Reserve shall be credited to payment of the Loan on the Maturity Date.

Maker shall be entitled to one (1), six (6) month extension of the Maturity Date, upon notice to Lender and the concurrent payment to Lender of an extension point equal to one percent (1%) of the original principal amount of the Loan (i.e., such extension point would be in an amount equal to \$155,000.00). Such notice and payment shall be delivered by Maker, if at all, at least thirty (30) days prior to the originally scheduled Maturity Date. As a condition to Maker's right to extend the Maturity Date as set forth herein, there shall exist no Event of Default.

Each Maker and endorser severally waives demand, protest and notice of maturity, non-payment or protest and all requirements necessary to hold each of them liable as makers and endorsers and consents without notice to any and all extensions of time or changes in terms of payment by the holder of this Note.

Each Maker, endorser and guarantor, jointly and severally agrees to pay all costs of collection, including reasonable attorneys' fees, in the event it becomes necessary to protect the security hereof, whether suit be brought or not.

The said principal sum or the unpaid balance thereof, with interest thereon, shall become due and payable, at the option of the Holder, after default in the payment of any installment of interest for a period of ten (10) days, or after default in the performance of any of the covenants or conditions of the Mortgage (defined below) executed simultaneously herewith within the time therein limited. Should the Maker fail to pay any installment of interest hereunder and such failure shall continue for a period of ten (10) days, Maker shall pay a late charge in the amount of Five Percent (5%) on the installment of interest so overdue; except that with regard to final payment due on the Maturity Date, interest shall accrue at the Default Interest Rate (as defined below).

From and after the occurrence of an Event of Default, as such term is hereinafter defined, under this Note or the maturity thereof, whether normal maturity or accelerated maturity and after the expiration of all applicable cure and grace periods, the unpaid principal hereof shall bear interest at the lesser of: (a) twenty-four percent (24%) or (b) the highest rate allowed by law (the "Default Interest Rate").

This Note is secured by, amongst other things, an Open-End Mortgage, Security Agreement and Fixture Filing as to property legally described therein (the "Property") of even date herewith, and is to be construed and enforced according to the laws of New York but as to enforceability as an encumbrance to the Property, the law of the state in which the encumbered Property is located shall govern. Upon default in the payment of any of the terms and conditions of said Mortgage, and after the expiration of all applicable cure and grace periods, then, at the option of Lender, the entire principal sum remaining unpaid, together with accrued interest, shall become immediately due and payable, without further notice.

The term "Loan Documents" shall mean any and all of the documents heretofore, now, or hereafter executed by Maker, by others or by Maker and others which wholly or partly secure or

were, are, or will be executed in connection with the indebtedness evidenced by this Note, including, but not limited to, the Mortgage; Assignment of Leases and Rents; Collateral Assignment of Documents Affecting Real Estate; Guaranty of Payment and Performance; Pledge and Security Agreement; Environmental Compliance and Indemnity Agreement; and associated affidavits, disclosures and miscellaneous loan documentation.

This Note may be prepaid in whole at any time, provided that in no event shall payments of interest due and payable to Lender under the Loan be less than six (6) months of interest due and payable pursuant to this Note (the "Prepayment Premium"). For further clarification, in the event that the outstanding principal balance hereof is prepaid in full (but not in part) prior to the Maturity Date, to the extent that any previous interest payments have not satisfied the Prepayment Premium, then such final payment shall be accompanied by an amount equal to the difference between the interest already paid to Lender (the "Paid Interest") and the Prepayment Premium; prepayments in part prior to the Maturity Date shall not be subject to the Prepayment Premium as long as the Prepayment Premium is paid in full prior to or on the Maturity Date. Notwithstanding anything to the contrary herein, the Paid Interest shall not include any late charge(s), payments made under the Default Interest Rate, or any other payment(s) made to Lender outside of the Interest Payment. Maker shall give Lender not less than thirty (30) days prior written notice of its intent to make any prepayment.

In addition to any principal, interest, late fees, prepayment premiums, or other sums due or payable from time to time under this Note, Maker shall pay an exit point (the "Exit Point") to Lender on or before the Maturity Date at the time of repayment of the Loan (including, if payment of the Loan is accelerated in accordance with the terms and conditions of this Note or the other Loan Documents, upon such acceleration). The Exit Point shall be in an amount equal to one percent (1%) of the original principal amount of the Loan (i.e., the Exit Point will be in an amount equal to \$155,000.00). In the event of any prepayment, in whole or in part, including any scheduled principal payment due under this Note prior to the Maturity Date, the full Prepayment Premium and Exit Point shall be due and payable on the prepaid portion of the principal at the time of the prepayment. Maker agrees to pay the Exit Point to Lender in consideration of the Lender's funding of the Loan.

Loan to Value. Maker shall at all times during the term of the Loan maintain a loan to value ratio of no greater than seventy-five percent (75%) of the appraised market value of the property secured by the Mortgage (the "Property") based on an "as-is" basis. If for any reason Lender in its reasonable, good faith, discretion determines that the value of the Property may have declined, within twenty (20) days of Lender's written request, Maker shall provide to Lender, at Maker's sole cost and expense, a current appraisal of the Property to be ordered by Maker from an appraiser designated by Lender, in a form and content as required by Lender. Maker shall cooperate fully with any such appraiser and provide all such documents and information as such appraiser may request in connection with such appraiser's performance and preparation of such appraisal.

Maker and any endorsers, sureties, guarantors, and all others who are, or who may become liable for the payment hereof, severally expressly grant to the Lender a continuing first lien security interest in and authorize and empower the Lender, at its sole discretion, at any time after the

occurrence of an Event of Default as such term is hereinafter defined and provided all applicable notice, grace and/or cure periods shall have expired, to appropriate and in such order as Lender may elect, apply to the payment hereof, any and all money, general or specific deposits, or collateral of any such parties now or hereafter in the possession of the Lender.

This Note was negotiated in the State of New York, and made by Maker and accepted by Lender in the State of New York, and the proceeds of this Note were disbursed from the State of New York which state the parties agree has a substantial relationship to the parties and to the underlying transaction embodied hereby, and in all respects, including, without limiting the generality of the foregoing, matters of construction, validity and performance, this Note and the obligations arising hereunder shall be governed by, and construed in accordance with, the laws of the State of New York applicable to contracts made and performed in such state (without regard to principles of conflict of laws) and any applicable law of the United States of America. To the fullest extent permitted by law, Maker and any endorsers, sureties, guarantors and all others who are, or who may become liable for the payment hereof, severally, irrevocably, and unconditionally waive any claim to assert that the law of any other jurisdiction governs this Note and this Note shall be governed by and construed in accordance with the laws of the State of New York.

Any legal suit, action or proceeding against Lender or Maker arising out of or relating to this Note may at Lender's option be instituted in any federal or state court in the City of New York, County of New York or in a court of record of the State of Ohio in Franklin County, Ohio or in the United States District Court for the Southern District of Ohio, and Maker waives any objections which it may now or hereafter have based on venue and/or forum non conveniens of any such suit, action or proceeding, and Maker hereby irrevocably submits to the jurisdiction of any such court in any suit, action or proceeding. Maker does hereby designate and appoint:

Chaim C. Zlotowitz, Esq.
Law Offices of Chaim C. Zlotowitz, Esq. PLLC
140A Washington Avenue, Suite 203
Cedarhurst, New York 11516

as its authorized agent to accept and acknowledge on its behalf service of any and all process which may be served in any such suit, action or proceeding in City of New York, County of New York, and agrees that service of process upon said agent at said address and written notice of said service mailed or delivered to Maker in the manner provided herein shall be deemed in every respect effective service of process upon Maker in any such suit, action or proceeding in the State of New York. Maker (i) shall give prompt notice to Lender of any changed address of its authorized agent hereunder, (ii) may at any time and from time to time designate a substitute authorized agent with an office in New York (which substitute agent and office shall be designated as the person and address for service of process), and (iii) shall promptly designate such a substitute if its authorized agent ceases to have an office in New York or is dissolved without leaving a successor.

Upon the happening of any of the following events ("Event of Default"), each of which shall constitute a default hereunder, and after the expiration of all applicable notice, cure and grace periods all sums due hereunder shall thereupon or thereafter, at Lender's option, without further notice or demand, except as otherwise provided herein, become immediately due and payable: (a)

failure of any Obligor (which term shall mean and include each Maker, endorser, surety, guarantor or other party liable for payment of or pledging collateral or security under this Note) to pay on or before expiration of any applicable grace period, any sum due hereunder; (b) occurrence of default under any of the Loan Documents, any covenant or condition therein or any other loan agreement or security instrument now or hereafter in effect which by its terms covers this Note or the indebtedness evidenced hereby; beyond any applicable notice or grace period; (c) filing of any petition under the Bankruptcy Code or any similar federal or state statute by or against any Obligor or the insolvency of any Obligor and not discharged and dismissed within thirty (30) days from the filing thereof; (d) making of a general assignment by any Obligor for the benefit of creditors, appointment of or taking possession by a receiver, trustee or custodian or similar official for any Obligor or for any assets of any such Obligor or institution by or against any Obligor of any kind of insolvency proceedings or any proceeding for dissolution or liquidation of any Obligor which is not dismissed within thirty (30) days of the filing thereof; (e) entry of a final judgment against any Obligor which is not satisfied or transferred to bond within thirty (30) days of the date of entry; (f) material falsity in any certificate, statement, representation, warranty or audit at any time furnished to Bank by or on behalf of any Obligor pursuant to or in connection with this Note, the Loan Documents or any loan agreement or security agreements now or hereafter in effect, which by its terms covers this Note for the indebtedness evidenced hereby or otherwise including any omission to disclose any substantial contingent or liquidated liabilities or any material adverse change in any facts disclosed by any certificate, statement, representation, warranty or audit furnished to Lender; (g) issuance of any writ of attachment or writ of garnishment or filing of any lien against any Collateral (as defined below) or the property of any Obligor which is not dismissed within thirty (30) days of the date of issuance or filing, whichever is applicable; (h) taking of possession of any material Collateral or of any substantial part of the property of any Obligor at the instance of any governmental authority; (i) dissolution, merger, consolidation, or reorganization of any Obligor; (j) assignment or sale by any Obligor of any equity in any Collateral without the prior written consent of Lender, except as otherwise permitted by the Mortgage; or (k) cancellation of any guaranty with respect hereto without the prior written consent of Lender hereof.

Lender shall have all of the rights and remedies of a creditor, mortgagee and secured party under all applicable law.

Without limiting the generality of the foregoing, upon the occurrence of an Event of Default hereunder, Lender may, at its option, and without notice or demand after the expiration of all applicable cure and grace periods: (i) declare the entire unpaid principal and accrued interest accelerated and due and payable at once, together with any and all other liabilities of Maker or any such liabilities selected by Lender; and (ii) set-off against this Note all monies owed by Lender in any capacity to Maker, and Lender shall be deemed to have exercised such right of set-off, and to have made a charge against any such money immediately upon the occurrence of such default, although made or entered on the books subsequent thereto. To the extent that any of the collateral securing this Note ("Collateral") is personal property and Lender elects to proceed with respect to it in accordance with the Uniform Commercial Code, then, unless that Collateral is perishable or threatens to decline speedily in value, or is of a type customarily sold on a recognized market, Lender will give Maker reasonable notice of the time and place of any public or private sale thereof. The requirement of reasonable notice shall be met if such notice is, at the option of Lender, hand delivered, sent via expedited courier, or mailed, postage prepaid to Maker, at the address

given to Lender by Maker, or any other address shown on the records of Lender at least ten (10) days before the time of sale. Upon disposition of any Collateral after the occurrence of an Event of Default hereunder, Maker shall be and shall remain liable for any deficiency; and Lender shall account to Maker for any surplus, but Lender shall have the right to apply all or part of such surplus (or to hold the same as reserve) against any and all other liabilities of Maker to Lender.

If the calculation of interest or the imposition of a change in the rate of interest after acceleration upon default or the payment of any fees or other charges which are construed to be interest under applicable law, rule, or regulation in effect from time to time, result in an effective rate of interest higher than that permitted to be paid under applicable law, rule, or regulation in effect from time to time, then such charges shall be reduced by a sum sufficient to result in an effective rate of interest no greater than the maximum effective rate of interest permitted to be paid under applicable law, rule or regulation in effect from time to time. The Lender may, in determining the maximum rate permitted under applicable law, rule or regulation in effect from time to time, take advantage of: (i) the rate of interest permitted by New York law and 12 United States Code, Sections 85 and 86, and (ii) any other law, rule or regulation in effect from time to time, available to Lender which exempts Lender from any limit upon the rate of interest it may charge or grants to Lender the right to charge a higher rate of interest than that permitted by New York law. Upon maturity of this Note, whether by acceleration or in due course, interest shall be recalculated over the actual life of the loan based upon the amounts outstanding, and if the total amount of interest theretofore paid exceeds the amount permitted to be paid under applicable law, rule, or regulation in effect from time to time, the excess shall be credited to principal, or if such excess exceeds the principal amount due hereunder, refunded to the Maker.

TIME IS OF THE ESSENCE OF THIS NOTE. It is agreed that the granting to Maker or any other party of an extension or extensions of time for the payment of any sum or sums due under this Note or under the Mortgage or for the performance of any covenant or stipulation thereof or the taking of other or additional security shall not in any way release or affect the liability of Maker under this Note or any of the Loan Documents. This Note may not be changed orally, but only by an agreement in writing, signed by the party against whom enforcement of any waiver, change, modification or discharge is sought. Maker acknowledges that Lender shall have no obligation whatsoever to renew, modify or extend this Note or to refinance the indebtedness under this Note upon the maturity thereof, except as specifically provided herein. Lender shall have the right to accept and apply to the outstanding balance of this Note any and all payments or partial payments received from Maker after the due date therefor, whether this Note has been accelerated or not, without waiver of any of Lender's rights to continue to enforce the terms of this Note and to seek any and all remedies provided for herein or in any instrument securing the same, including, but not limited to, the right to foreclose on such security. All amounts received by Lender shall be applied to expenses, late fees and interest before principal or in any other order as determined by Lender, in its sole discretion, as permitted by law. Maker shall not assign Maker's rights or obligations under this Note without Lender's prior consent.

MAKER AND HOLDER HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY AND ALL RIGHT THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT TO ANY LITIGATION (INCLUDING BUT NOT LIMITED TO) ANY CLAIMS, CROSS CLAIMS OR THIRD PARTY CLAIMS ARISING OUT OF, UNDER OR IN

CONNECTION WITH THIS NOTE, THE OTHER LOAN DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREIN. MAKER HEREBY CERTIFIES THAT NO REPRESENTATIVE OR AGENT OF THE HOLDER NOR THE HOLDER'S COUNSEL HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT THE HOLDER WOULD NOT, IN THE EVENT OF SUCH LITIGATION, SEEK TO ENFORCE THIS WAIVER OF RIGHT TO JURY TRIAL PROVISION. MAKER ACKNOWLEDGES THAT THE HOLDER HAS BEEN INDUCED TO ENTER INTO THIS LOAN, INCLUDING THIS NOTE, BY, INTER ALIA, THE PROVISIONS OF THIS PARAGRAPH.

Within ten (10) days after each calendar month during the term of the Loan, Maker shall supply Lender with financial statements pertaining to Maker and Property, together with (i) bank and brokerage statements for the prior calendar month, all in forms in accordance with Maker's normal and customary practices if based upon standard or generally accepted accounting principles or reasonably acceptable to Lender in its reasonable discretion, and (ii) such supporting documentation as Lender reasonably requests. Within sixty (60) days after the end of each calendar year or upon Lender's request, whichever is earlier, Maker shall supply Lender with (i) an annual financial statement, together with bank and brokerage statements for the prior calendar year, all in forms in accordance with Maker's normal and customary practices if based upon standard or generally accepted accounting principles or reasonably acceptable to Lender in its reasonable discretion, and (ii) such supporting documentation as Lender reasonably requests. In addition, within forty five (45) days of filing, Maker shall supply Lender with a copy of its annual tax return, together with any K-1 statements for the prior year; or, if an extension is filed for any tax return, within forty five (45) days after any permitted extension date.

Maker acknowledges that as an inducement to make the Loan, Lender shall have the exclusive right (but not the obligation) of first refusal to provide to Maker, directly or through an affiliate of Lender or another fund or account of Lender or its affiliates (a "Replacement Loan Lender"), any re-financing, take-out financing or other replacement financing with respect to the Property (any such re-financing, take-out financing or other replacement financing, a "Replacement Loan"). If Maker shall receive a written commitment or written offer for a Replacement Loan from a third party lender (any such written commitment or written offer, a "Competing Offer"), Maker shall promptly submit such Competing Offer to Lender; provided, however, in no event shall Maker sign any Competing Offer which provides such third party institutional lender with an exclusive right to provide a Replacement Loan, and, if such third party institutional lender insists on including such an exclusive right in its written offer, then Maker shall deliver the Competing Offer to Lender unsigned without any related deposit funded to such third party institutional lender. Upon receipt of such Competing Offer, Lender shall have ten (10) days to request of Maker, in writing, any additional information needed by Lender or Replacement Loan Lender to analyze the Competing Offer, including but not limited to an application to be completed by Maker for such Replacement Loan on Lender's, and, if applicable, Replacement Loan Lender's, standard application form (collectively, "Additional Information"). Maker shall deliver to Lender all such Additional Information as has been requested within ten (10) days after receipt of Lender's request for the Additional Information. Lender shall have ten (10) days after receipt from Maker of the Additional Information to match the terms of the Competing Offer. If Lender agrees to match such terms either directly or through Replacement Loan Lender, Maker shall enter into such Replacement Loan with Lender or Replacement Loan Lender, as applicable, upon such matched


terms. If Lender does not agree to match the terms of the Competing Offer, Maker may enter into the Replacement Loan with the other lender on the same terms as the Competing Offer delivered to Lender; provided, however, that if such Replacement Loan with the other institutional lender (i) does not close within seventy five (75) days after the date on which Lender did not agree to match the terms of the Competing Offer or (ii) is modified so that the terms that are not the same as those contained in the Competing Offer delivered to Lender, Maker shall again have to comply with all of the aforementioned terms of this paragraph, except if the terms are more beneficial to Borrower. For the purposes of this paragraph, the terms "match" or "matching" means agreeing to match (i) the principal amount of the Replacement Loan, (ii) the overall yield payable in connection to the Replacement Loan (including any placement fees, broker fees, arrangement fees or any other fee associated with the arranging of the financing), and (iii) the term of the Replacement Loan. If Lender or any Replacement Loan Lender matches a Competing Offer, Maker shall be obligated to accept such Replacement Loan from Lender or Replacement Loan Lender, as applicable. Maker shall cooperate in good faith with Lender, and, if applicable, Replacement Loan Lender. It shall be an immediate Event of Default if Maker fails to comply with any of the terms of this paragraph. Further, failure to comply with any of the terms set forth in this paragraph shall result in Maker owing a fee equal to two percent (2%) of the original principal balance of the Loan as of the date of this Note, which fee will be payable upon: (1) payment made on the Maturity Date which results in a full payoff of the Loan, (2) any payment of the Loan which results in a full payoff of the Loan, upon acceleration of the Loan following the occurrence of an Event of Default, (3) any optional prepayment of the Loan which results in a full payoff of the Loan, or (4) any mandatory prepayment of the Loan which results in a full payoff of the Loan.

(SIGNATURE PAGES TO FOLLOW)

(Signature page of Promissory Note)

MAKER:

APEX COLONIAL OH LLC, a Delaware limited liability company

By: 
Name: Oron Zarum
Title: Authorized Signatory

STATE OF NJ)
) SS:
COUNTY OF Ocean)

The foregoing instrument was acknowledged before me this 06 day of August, 2020, by Oron Zarum, as Authorized Signatory of Apex Colonial OH LLC, a Delaware limited liability company, who personally is known to me or has produced a NJ Driver License as identification, and took an oath.

Yehudis S. Zarum
Notary Public
State of New Jersey
My Commission Expires August 15, 2021

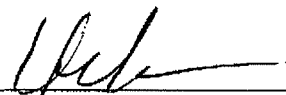

NOTARY PUBLIC
Print Name: Yehudis Zarum
My Commission Expires: 8/15/2021

EXHIBIT 2

ENVIRONMENTAL COMPLIANCE AND INDEMNITY AGREEMENT

THIS ENVIRONMENTAL COMPLIANCE AND INDEMNITY AGREEMENT (this "Agreement") is made and entered into on August __, 2020, by APEX COLONIAL OH LLC, a Delaware limited liability company ("Borrower") and ARON PURETZ and ORON ZARUM (individually and collectively, "Guarantor") in favor of EF SBC 2015-2 LLC, a Delaware limited liability company ("Lender"). Borrower and Guarantor are sometimes hereinafter individually and/or collectively referred to as the "Obligor".

RECITALS

A. Borrower has requested and Lender has agreed to make a loan in the amount Fifteen Million Five Hundred Thousand and No/100 Dollars (\$15,500,000.00) (the "Loan"), as evidenced by that certain Promissory Note dated of even date herewith in favor of Lender in the original principal amount of Fifteen Million Five Hundred Thousand and No/100 Dollars (\$15,500,000.00) (as the same may be amended, restated, modified or replaced from time to time, the "Note"). The Note is secured, in part, by that certain Open-End Mortgage, Security Agreement and Fixture Filing dated as of even date herewith, from Borrower in favor of Lender, to be recorded in the public records of Franklin County, Ohio (as the same may be amended, restated, modified or replaced from time to time, the "Mortgage"), which Mortgage encumbers certain real and personal property more particularly described in Exhibit "A" attached hereto and by this reference made a part hereof, including all buildings and other improvements now or hereafter located thereon, and any other real property hereinafter encumbered by the lien of the Mortgage (collectively, the "Property").

B. Intentionally Deleted.

C. As additional security for the Note, Guarantor is executing and delivering to Lender that certain Guaranty of Payment and Performance dated as of even date herewith (as the same may be amended, restated, modified or replaced from time to time, individually and/or collectively, the "Guaranty").

D. Borrower and Guarantor shall each realize direct and indirect benefits from Lender making the Loan to Borrower.

E. Lender would not be willing to make the Loan if "Hazardous Substances" (as hereinafter defined) were present on, under or about the Property in violation of applicable "Environmental Laws" (as hereinafter defined) or if the operations and activities of Borrower in connection with the Property were in violation of applicable Environmental Laws.

F. As a material inducement to Lender to make the Loan, Borrower and Guarantor have agreed to make certain warranties, representations and covenants regarding the presence of Hazardous Substances on, under or about the Property and the operations and activities of Borrower and Guarantor in connection with the Property, and to indemnify and hold the Lender harmless from and against any and all liability, damages, losses, claims, costs and expenses resulting from or arising out of any claim, demand, cost or judgment made against the Lender by any person including, without limitation, any governmental authority, in connection with the presence of Hazardous Substances in or about the Property or any failure to comply with Environmental Laws with respect to the Property or any operations and activities of Borrower and Guarantor in connection therewith.

G. As a condition to making the Loan, the Lender requires that the representations, covenants and indemnifications herein contained shall survive the full satisfaction of the Loan, to the

extent provided herein, as the continuing, absolute and unconditional joint and several liability of Borrower and Guarantor.

AGREEMENT

NOW THEREFORE, in consideration of and to induce the Lender to make the Loan and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower and Guarantor, intending to be legally bound, jointly and severally, hereby represent, covenant and agree for themselves and their successors and assigns as follows:

1. Recitals. The above Recitals are true and correct and are incorporated herein by this reference.

2. Definitions.

(a) "Hazardous Substance" means any hazardous, toxic or dangerous waste, substance, or material including, but not limited to, any elements, compound, substance or material which are now or hereafter (i) identified in Section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. § 9601(14), and as set forth in 40 C.F.R. § 302, as the same may be amended from time to time, (ii) determined to be toxic, a pollutant or contaminant, under any Environmental Law, (iii) defined as "petroleum" and "petroleum products" as defined in applicable Environmental Laws, as same may be amended from time to time, and (iv) asbestos, radon, polychlorinated biphenyls and such other elements, compounds, materials, substances or waste which are otherwise dangerous, hazardous, harmful or deleterious to human or animal health or safety, or the environment.

(b) "Environmental Law" means any federal, state or local law, enactment, statute, code, ordinance, order, rule, regulation, judgment, decree, writ, injunction, franchise, permit, certificate, license, authorization or other direction or requirement of any federal, state, county, municipal or other government department, entity, authority, commission, board, bureau, court, agency or any instrumentality thereof, as same may be amended from time to time, whether now in existence or established or hereafter enacted, promulgated, adopted, entered or issued, both within and outside the present contemplation of the parties hereto, relating to pollution or protection of the environment, including but not limited to, (i) CERCLA, 42 U.S.C. §§ 9601-9657, (ii) the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), Public Law 99-499, 100 Stat. 1613, (iii) the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901-6987, (iv) the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 et seq.; (v) the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq.; (vi) the Clean Air Act, 42 U.S.C. § 7401 et seq.; (vii) the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.; (viii) the Safe Drinking Water Act, 42 U.S.C. § 300f et seq.; (ix) the Water Quality Assurance Act of 1983; (x) any law, rule or regulation relating to emissions, discharges, releases or threatened releases of pollutants, contaminants or chemicals, or industrial, toxic or other Hazardous Substances or waste into the environment (including without limitation, ambient air, surface water, groundwater, land surface or subsurface strata); (xi) any law otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of pollutants, contaminants or chemicals or industrial, toxic or other Hazardous Substances or wastes; and (xii) any other designations as toxins, pollutants or contaminants by any other federal, state, county, municipal or other governmental department, entity, authority, commission, board, bureau, court agency or any instrumentality of any of them (including, without limitation, the United States Environmental Protection Agency).

3. Representations and Warranties. Borrower represents and warrants to Lender that to the best of Obligor's knowledge:

(a) Borrower has made due inquiry and investigation into the present condition of the Property and the previous ownership and uses of the Property consistent with good commercial or customary practice in an effort to minimize liability with respect to Hazardous Substances.

(b) Borrower and the Property are in full compliance with all Environmental Laws, and, to the best of their knowledge and belief, there are no civil, criminal or administrative actions, suits, demands, claims, hearings, notices or demand letters, notices of violation, investigations, or proceedings pending or threatened against the Borrower or the Property relating in any way to any Environmental Law or any agreement, plan, order, decree, judgment, injunction, notice or demand letter issued, entered, promulgated or approved under any Environmental Law.

(c) No written notice or advice has been received by Borrower of any condition or state of facts that would contribute to a claim of pollution or any other damage to the environment by reason of the conduct of any business on the Property or operation of the Property, whether past or present.

(d) There have never been to Obligor's knowledge nor are there currently any Hazardous Substances in violation of any applicable Environmental Law located on, in, or under the Property or used in connection therewith and no Obligor or any other person has ever used the Property for the manufacture, processing, distribution, use, transport, handling, treatment, storage, disposal, emission, discharge or release of any Hazardous Substance in violation of applicable Environmental Law.

(e) None of the real property owned directly or occupied by Obligor and located in the Commonwealth of Massachusetts other than the Property, contains any Hazardous Substance in violation of any applicable Environmental Law, to the best of Obligor's knowledge.

4. Covenants. Borrower and Lender covenant and agree:

(a) Borrower and the Property shall at all times remain in full compliance with all Environmental Laws.

(b) Borrower shall not, nor permit any other person to manufacture, process, distribute, use, transport, handle, treat, store, dispose, emit, discharge, leak, spill or release any Hazardous Substance on, in, under or from the Property except in compliance with Environmental Law.

(c) Borrower shall immediately notify Lender orally and in writing if Borrower (i) becomes aware of the presence of any Hazardous Substance or other environmental problem or liability on, in, under, released from or associated with the Property, or (ii) receives any complaint, order, citation, notice or other written or oral communication (an "Environmental Complaint") regarding air emissions, water discharges or any other environmental, health or safety matter affecting the Property or any part thereof, or the presence of any Hazardous Substance on, in, under, released from or associated with the Property, or any past, present or future events, conditions, circumstances, activities, practices, incidents, actions or plans involving the manufacture, processing, distribution, use, transport, handling, treatment, storage, disposal, cleanup, emission, discharge, spillage, seepage, leakage, release or threatened release of any Hazardous Substance on, under or from the Property in violation of any Environmental Law. Borrower shall forthwith transmit to Lender copies of any Environmental Complaint.

(d) Each Obligor shall, at its own cost and expense, take any action necessary or advisable for the cleanup of any Hazardous Substance on, in, under, released from or associated with the Property, including any removal, containment or remedial actions in accordance with all applicable

Environmental Laws, and shall pay or cause to be paid all cleanup, administrative, enforcement and other costs, expenses or fines which may be asserted against Obligor, Lender, the Property, or any other person in connection therewith.

(e) Lender shall have the right but not the obligation, and without any limitation of Lender's other rights under this Agreement, to enter onto the Property or to take such actions as it deems reasonably necessary or advisable to cleanup, remove, resolve or minimize the impact of, or otherwise deal with, any Hazardous Substance or any Environmental Complaint, following receipt of any notice from any person or governmental authority asserting the existence of any Hazardous Substance or an Environmental Complaint pertaining to the Property or any part thereof which, if true, could result in an order, suit or other action against Borrower or Lender which, in the reasonable opinion of Lender, could jeopardize Lender's security under the Mortgage. All costs and expenses reasonably incurred by Lender in the exercise of any such rights shall be payable by each Obligor upon demand if the exercise results from Obligor's failure to comply with Environmental Laws or this Agreement and such failure persists after written notice of the failure and a reasonable opportunity to cure it.

5. Indemnification.

(a) Each Obligor hereby, jointly and severally, covenants and agrees, at its sole cost and expense, to protect, indemnify, reimburse, defend and hold harmless Lender and its directors, officers, agents, employees, attorneys, successors and assigns from and against any and all liabilities (including strict liability), losses, suits, proceedings, orders, penalties, fines, settlements, judgments, liens, assessments, claims, demands, damages, injuries, obligations, costs, disbursements, expenses or fees of any kind or nature (including, without limitation, cleanup costs, containment costs, attorneys', paralegals', consultants' or experts' fees and disbursements and costs of litigation), regardless of whether within the control of Lender, which may at any time be imposed upon, incurred by or asserted or awarded against Lender, directly or indirectly, related to or resulting from: (i) the breach of any representation or warranty under this Agreement; (ii) any acts or omissions of Obligor or any other person at, on or about the Property regarding the contamination of air, soil, surface waters or groundwaters over, on or under the Property; (iii) the presence, whether past, present or future, of any Hazardous Substances on, in or under the Property; (iv) any past, present or future events, conditions, circumstances, activities, practices, incidents, actions or plans involving the manufacture, processing, distribution, use, transport, handling, treatment, storage, disposal, cleanup, emission, discharge, seepage, spillage, leakage, release or threatened release of any Hazardous Substance on, in under or from the Property, in connection with Borrower's operations on the Property, or otherwise; or (v) the enforcement of this Agreement or the assertion by any Obligor of any defense to its obligations hereunder, whether any of such matters arise before or after foreclosure of the Mortgage or other taking of title to all or any portion of the Property, including, without limitation, (a) the costs of removal of any and all Hazardous Substances from all or any portion of the Property, (b) additional costs required to take necessary precautions to protect against the release of Hazardous Substances located on, in, or under the Property into the air, any body of water, any other public domain or into any surrounding areas, and (c) costs incurred to comply, in connection with all or any portion of the Property, with all applicable Environmental Laws.

(b) The indemnifications of this Section shall survive the full payment and performance of the Loan and the Mortgage, the release of the Property and satisfaction of the Mortgage. Notwithstanding the foregoing, the indemnifications contained in this Section shall expressly exclude any matters first occurring or first arising from and after the date Borrower becomes divested with title either by sale, foreclosure or otherwise, except to the extent such matters are caused by Borrower. Except when not practical due to an emergency, Borrower shall be given written notice and a reasonable opportunity to cure before Lender seeks self help or any other remedy under this Agreement or reimbursement for the costs thereof.

(c) The liabilities, losses, claims, damages and expenses for which Lender is indemnified under this Section shall be reimbursed to Lender by Obligor, without any requirement of waiting for ultimate outcome of any litigation, claim or other proceeding, within thirty (30) days after notice from Lender itemizing the amounts incurred to the date of such notice. In addition to any remedy available for failure to pay such amounts, such amounts shall thereafter bear interest at the "Default Rate" (as defined in the Loan Documents).

(d) Each Obligor waives any acceptance of this indemnity by Lender.

6. Environmental Audits. In the event that Lender has reasonable cause to believe that the Property is not in compliance with any applicable Environmental Law, Borrower or Guarantor shall, within thirty (30) days of Lender's written request, cause to be prepared an environmental audit of the Property and, if required by Lender, an environmental risk assessment of the Property including Hazardous Substances waste management practices and Hazardous Substances waste disposal sites thereon. All such environmental audits and environmental risk assessments shall be at Borrower's expense, shall be performed and prepared by an environmental consultant reasonably satisfactory to Lender, and shall otherwise be in form and substance reasonably satisfactory to Lender. Should Obligor fail to provide such environmental audit or environmental risk assessment within said thirty (30) day period, Lender shall have the right, but not the obligation, to retain an environmental consultant to perform and prepare same. All costs and expenses incurred by Lender in the exercise of such rights shall be secured by this Mortgage and shall be payable by Obligor upon demand or charged to Obligor's Loan balance at the discretion of Lender.

7. Default. Any material breach of any warranty, representation, covenant or agreement contained in this Agreement not cured within ten (10) days of notice from Lender, shall constitute an "Event of Default" under the Note and each other Loan Document and shall entitle Lender to exercise any and all remedies provided in the Loan Documents, or otherwise permitted by law or equity.

8. Miscellaneous Provisions.

(a) Lender's rights under this Agreement shall be in addition to all rights of Lender under the Mortgage, the Note and the other Loan Documents, and any payments by Obligor under this Agreement shall not reduce Obligor's obligations and liabilities under any of the Loan Documents.

(b) The liability of any Obligor under this Agreement shall in no way be limited or impaired by, and each Obligor hereby consents to and agrees to be bound by, any amendment or modification of the provisions of the Loan Documents whether any such amendment or modification is made by Lender and Obligor. In addition, the liability of any Obligor under this Agreement shall in no way be limited or impaired by (i) any extensions of time for performance required by any of the Loan Documents, (ii) any sale, assignment or foreclosure of the Note or Mortgage or any sale or transfer of all or part of the Property, (iii) any exculpatory provision in any of the Loan Documents limiting Lender's recourse to the Property or to any other security, or limiting Lender's rights to a deficiency judgment against Obligor, (iv) the accuracy or inaccuracy of the representations and warranties made by Obligor under any of the Loan Documents, (v) the release of Obligor, or any other person from performance or observance of any of the agreements, covenants, terms or conditions contained in this Agreement or any of the Loan Documents, by operation of law, Lender's voluntary act arising after foreclosure, or otherwise, (vi) the release or substitution, in whole or in part, of any security for the Note or (vii) Lender's failure to record the Mortgage or file any UCC financing statements (or Lender's improper recording or filing of any thereof) or to otherwise perfect, protect, secure or insure any security interest or lien given as security for the Note; and, in any such case, whether with or without notice to Obligor and

with or without consideration. Any payments made by any Obligor hereunder shall not reduce any Obligor's obligations under the Loan Documents.

(c) Borrower, Guarantor and any other person liable upon or in respect of this Agreement or the Loan Documents may be released without affecting the liability of any party not so released.

(d) No delay on Lender's part in exercising any of its rights, remedies, powers or privileges under this Agreement, under any of the Loan Documents, or as otherwise provided at law or in equity, shall operate as a waiver of any such right, remedy, power or privilege, or excuse Borrower or Guarantor from their obligations hereunder. Any waiver of such right, remedy, power or privilege by Lender must be in writing and signed by an authorized agent of Lender.

(e) Obligor's obligations under this Agreement shall not be subject to any non-recourse or other limitation of liability provisions in the Note, Mortgage or any of the other Loan Documents, and Obligor acknowledges that its obligations under this Agreement are unconditional, and are not limited by any such non-recourse or similar limitation of liability provisions.

(f) All notices hereunder shall be in writing and shall be deemed to have been sufficiently given or served for all purposes when sent by registered or certified mail, if to Borrower at the address in the Mortgage or if to the Guarantor at the address in the Guaranty. Any party may designate a change of address by written notice (in accordance with the provisions of this Section) to any other party, received by such other party at least ten (10) days before such change of address is to become effective.

(g) This Agreement may be executed in one or more counterparts, each of which shall be deemed an original. Said counterparts shall constitute but one and the same instrument and shall be binding upon each of the undersigned individually as fully and completely as if all had signed but one instrument so that the joint and several liability of each of the undersigned shall be unaffected by the failure of any of the undersigned to execute any or all of said counterparts.

(h) This Agreement was negotiated in the State of New York, and made by Obligor and accepted by Lender in the State of New York, which state the parties agree has a substantial relationship to the parties and to the underlying transaction embodied hereby, and in all respects, including, without limiting the generality of the foregoing, matters of construction, validity and performance, this Agreement and the obligations arising hereunder shall be governed by, and construed in accordance with, the laws of the State of New York applicable to contracts made and performed in such state (without regard to principles of conflict of laws) and any applicable law of the United States of America. To the fullest extent permitted by law, Obligor and any endorsers, sureties, guarantors and all others who are, or who may become liable for the payment of amounts secured hereof, severally, irrevocably, and unconditionally waive any claim to assert that the law of any other jurisdiction governs this Agreement and this Agreement shall be governed by and construed in accordance with the laws of the State of New York.

Any legal suit, action or proceeding against Obligor or Lender arising out of or relating to this Agreement may at Lender's option be instituted in any federal or state court in the City of New York, County of New York or in a court of record of the State of Ohio in Franklin County, Ohio or in the United States District Court for the Southern District of Ohio and Obligor waives any objections which it may now or hereafter have based on venue and/or forum non conveniens of any such suit, action or proceeding, and Obligor hereby irrevocably submits to the jurisdiction of any such court in any suit, action or proceeding. Obligor does hereby designate and appoint:

Chaim C. Zlotowitz, Esq.
Law Offices of Chaim C. Zlotowitz, Esq. PLLC
140A Washington Avenue, Suite 203
Cedarhurst, New York 11516

As its authorized agent to accept and acknowledge on its behalf service of any and all process which may be served in any such suit, action or proceeding in City of New York, County of New York, and agrees that service of process upon said agent at said address and written notice of said service mailed or delivered to Obligor in the manner provided herein shall be deemed in every respect effective service of process upon Obligor in any such suit, action or proceeding in the State of New York. Obligor (i) shall give prompt notice to Lender of any changed address of its authorized agent hereunder, (ii) may at any time and from time to time designate a substitute authorized agent with an office in New York (which substitute agent and office shall be designated as the person and address for service of process), and (iii) shall promptly designate such a substitute if its authorized agent ceases to have an office in the State of New York or is dissolved without leaving a successor.

(i) Except as expressly provided herein to the contrary, this Agreement shall be binding upon and inure to the benefit of each Obligor and Lender and their respective heirs, personal representatives, successors and assigns. Notwithstanding the foregoing, Obligor shall not, without the prior written consent of Lender in each instance, assign, transfer or set over to another, in whole or in part, all or any part of their benefits, rights, duties and obligations hereunder unless as otherwise permitted in the Loan Documents.

(j) Any reference in this Agreement to attorneys' fees paid or incurred by Lender shall be deemed to include paralegals' fees and legal assistants' fees. Moreover, wherever provision is made herein for payment of attorneys' fees or expenses incurred by Lender, said provision shall include, but not be limited to, such fees or expenses incurred in any and all judicial, bankruptcy, reorganization, administrative, or other proceedings, including appellate proceedings, whether such fees or expenses arise before proceedings are commenced or after entry of a final judgment.

(k) Use of any gender shall include all other genders and words in the singular include the plural, and the plural include the singular.

(l) Borrower and Guarantor waive any right or claim of right to cause a marshalling of their assets or to cause Lender to proceed against any of the security for the Loan before proceeding under this Agreement against them or to proceed against any Obligor in any particular order. Each Obligor agrees that any payments required to be made hereunder shall become due on demand. Each Obligor expressly waives and relinquishes all rights and remedies (including any rights of subrogation) accorded by applicable law to indemnitors or guarantors.

(m) If any provision of this Agreement shall be contrary to the laws of the jurisdiction in which the same shall be sought to be enforced, the illegality or unenforceability of any such provision shall not affect the other terms, covenants and conditions hereof, and the same shall be binding upon each Obligor with the same force and effect as though such illegal or unenforceable provision were not contained herein.

9. WAIVER OF TRIAL BY JURY. EACH OBLIGOR AND LENDER HEREBY KNOWINGLY, IRREVOCABLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT ANY OF THEM MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY ACTION, PROCEEDING OR COUNTERCLAIM BASED ON THIS AGREEMENT, OR ARISING OUT

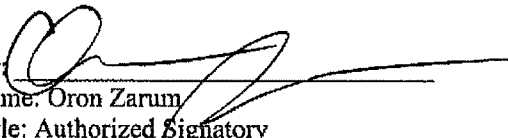
OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT, THE MORTGAGE, THE NOTE, OR ANY OTHER LOAN DOCUMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY HERETO OR TO ANY LOAN DOCUMENT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR OBLIGOR AND LENDER, ENTERING INTO THE SUBJECT LOAN TRANSACTION.

[EXECUTIONS ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first set forth above.

BORROWER:


APEX COLONIAL OH LLC, a Delaware limited liability company

By: 
Name: Oron Zarum
Title: Authorized Signatory

STATE OF NJ)
) SS:
COUNTY OF Ocean)

The foregoing instrument was acknowledged before me this 26th day of August, 2020, by Oron Zarum, as Authorized Signatory of Apex Colonial OH LLC, a Delaware limited liability company, who personally is known to me or has produced a NJ DRIVER'S License as identification, and took an oath.

Yehudis S. Zarum
Notary Public
State of New Jersey
My Commission Expires August 15, 2021


NOTARY PUBLIC
Print Name: Yehudis Zarum
My Commission Expires: 8/15/2021

GUARANTOR:

ARON PURETZ

STATE OF NJ

COUNTY OF Ocean

The foregoing instrument was acknowledged before me this 26th day of August, 2020, by ARON PURETZ, who is personally known to me or who has produced NJ Driver License (type of identification) as identification.

[Signature]
Signature of person taking acknowledgment

Yehudis Zarum
Name of acknowledger typed, printed or stamped

Notary Public Yehudis S. Zarum
Title or rank Notary Public
 State of New Jersey
 My Commission Expires August 15, 2021

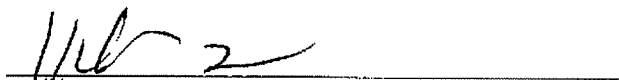
GUARANTOR:


ORON ZARUM

STATE OF NJ

COUNTY OF Ocean

The foregoing instrument was acknowledged before me this 26th day of August, 2020, by ORON ZARUM, who is personally known to me or who has produced NJ DRIVER License (type of identification) as identification.


Signature of person taking acknowledgment

Yehuda S. Zarum
Name of acknowledger typed, printed or stamped

Yehuda S. Zarum
Notary Public
State of New Jersey
Title or rank
My Commission Expires August 15, 2021

Exhibit "A"

Legal Description

All that certain lot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the City of Columbus, County of Franklin, State of Ohio.

Tract E:

Being located in Section 17, Township 12, Range 21, Refugee Lands, more particularly described as follows:

Beginning at a 3/4-inch iron pipe found in the Western right-of-way line of Rand Avenue and at the Southeastern corner of Lot 50 as the same is shown upon the recorded Plat of "Barnett Heights Amended", of record in Plat Book 27, Page 74;

Thence with the Westerly right-of-way line of Rand Avenue, as the same is shown upon the recorded Plat of "Dedication of Rand Avenue and Allendale Drive", of record in Plat Book 32, Page 104, the following Eight (8) courses:

- 1) South 3 deg. 32' 06" West, a distance of 120.35 feet to a found 5/8-inch rebar (bent);
- 2) South 14 deg. 21' 51" West, a distance of 28.66 feet to a set 3/4-inch iron pipe;
- 3) South 3 deg. 53' 06" West, a distance of 404.97 feet to found 5/8-inch rebar at a point of curvature;
- 4) Thence with a curve to the left, having a radius of 230.00 feet, an arc length of 100.42 feet, a central angle of 25 deg. 00' 53" and a chord which bears South 8 deg. 33' 59" East, a chord distance of 99.62 feet to a set 3/4-inch iron pipe at the point of reverse curvature;
- 5) Thence with a curve to the right, having a radius of 170.00 feet, an arc length of 72.74 feet, a central angle of 24 deg. 31' 02" and a chord which bears South 8 deg. 48' 55" East, a chord distance of 72.19 feet to a found 5/8-inch rebar at the point of tangency;
- 6) South 3 deg. 26' 36" West, a distance of 55.00 feet to a found 5/8-inch rebar;
- 7) South 13 deg. 26' 41" West, a distance of 28.79 feet to a found 5/8-inch rebar;
- 8) South 3 deg. 26' 36" West, a distance of 116.81 feet to a found 3/4-inch iron pipe at the intersection of the Westerly right-of-way line of said Rand Avenue and the Northerly right-of-way line of Livingston Avenue;

Thence North 86 deg. 30' 00" West, along the North right-of-way line of Livingston Avenue, a distance of 437.31 feet to a found 3/4-inch pinch top at the Southeast corner of a 0.792 acre tract, conveyed to Katja R. Turner, of record in Instr. No. 200507080134653;

Thence North 3 deg. 17' 48" East, with the Easterly line of said 0.792 acre tract, and the Easterly line of a 1.95 acre tract, conveyed to City of Columbus, Ohio, of record in D.B. 2452, Page 511, and the Easterly line of a 3.405 acre tract, conveyed to City of Columbus, Ohio, of record in Instr. No. 200602100027249, a distance of 821.60 feet to a set 3/4 iron pipe in the Southerly line of a 0.364 acre tract, conveyed to Patricia A. Johnson, of record in O.R. 14527 H09;

Thence South 86 deg. 44' 14" East, with the Southerly line of said 0.364 acre tract, and the Southerly line of a 0.364 acre tract, conveyed to Aneka Moore, of record in O.R. 07763 B16, and the Southerly line of a 0.343 acre tract, conveyed to Robert E. & Veronica J. Owens, of record in O.R. 09708 J01, and the Southerly line of a 0.364 acre tract, conveyed to Charlene Peachey & Geraldine Peachey Allen, of record in Instr. No. 200506160116684, and the Southerly line of a 0.130 acre tract, conveyed to Victoria L. Jones, of record in Instr. No. 200001070005865, a distance of 265.03 feet to a found 5/8-inch rebar at the South Easterly corner of said 0.130 acre tract;

Thence North 4 deg. 08' 56" East, with the Easterly line of said 0.130 acre tract, a distance of 99.52 feet to a found 5/8-inch rebar in the Easterly line of said 0.130 acre tract, and at the Southwest corner of said Lot 50 as the same is shown upon the recorded Plat of "Barnett Heights Amended", of record in Plat Book 32, Page 104;

Thence South 86 deg. 15' 31" East, with the Southerly line of said Lot 50, a distance of 150.85 feet, returning to the point of Beginnings, and containing 8.272 acres of land more or less, being subject to all restrictions, easements, and rights-of-way of previous record.

Basis of Bearings:

The centerline of Livingston Avenue was assigned a bearing of South 86 deg. 30' East as shown on the record plat of Berwick Arms, of record in Plat Book 34, Page 79.

Tract II:

Being located in Section 17, Township 12, Range 21, Refugee Lands, more particularly described as follows:

Beginning at a 3/4-inch iron pipe found in the Southerly right-of-way line of Allendale Drive and at the Northwest corner of Lot 12, as the same is shown upon the recorded Plat of "Berwick Arms", of record in Plat Book 34, Page 79;

Thence South 3 deg. 38' 36" West, with the Westerly line of said Lot 12, a distance of 120.09 feet to a found 3/4-inch iron pipe;

Thence South 86 deg. 21' 24" East, with the Southerly line of said Lot 12 and the Southerly line of Lot 13 and Lot 14, as the same is shown upon the recorded plat of "Berwick Arms", of record in Plat Book 34, Page 79, a distance of 167.26 feet to a found 3/4-inch iron pipe at the Southwesterly corner of Reserve "D" a 0.396 acre tract, (by survey), conveyed to Colonial Village Berwick, LLC, of record in Instr. No. 200605020083518;

Thence South 34 deg. 38' 34" East, with the Southerly line of said 0.396 acre tract, a distance of 117.21 feet to a set 3/4 iron pipe at the Northwesterly corner of Lot 15, as the same is shown upon the recorded Plat of "Berwick Arms", of record in Plat Book 34;

Thence South 3 deg. 26' 36" West, with the Westerly line of Lots 15 through 23, inclusive, as the same is shown upon the recorded Plat of "Berwick Arms", of record in Plat Book 34, Page 79, a distance of 537.65 feet to a found 3/4-inch pinch top at the Southwest corner of said Lot 23, and in the Northerly right-of-way line of Livingston Avenue;

Thence North 86 deg. 30' 00" West, along the North right-of-way line of Livingston Avenue, a distance of 525.55 feet to a found 3/4-inch iron pipe at the intersection of the North right-of-way of Livingston Avenue and the East right-of-way line of Rand Avenue;

Thence with the Easterly right-of-way line of Rand Avenue, as the same is shown upon the recorded Plat of "Dedication of Rand Avenue and Allendale Drive", of record in Plat Book 32, Page 104, the following Six (6)

courses:

- 1) North 3 deg. 26' 36" East, a distance of 116.88 feet to a found 5/8-inch rebar;
- 2) North 6 deg. 33' 29" West, a distance of 28.79 feet to a found 5/8-inch rebar;
- 3) North 3 deg. 26' 36" East, a distance of 55.00 feet to a set 3/4-inch iron pipe at a point of curvature;
- 4) Thence with a curve to the left, having a radius of 230.00 feet, an arc length of 98.42 feet, a central angle of 24 deg. 31' 02" and a chord which bears North 8 deg. 48' 55" West, a chord distance of 97.67 feet to a found 5/8-inch rebar iron pin at a point of reverse curvature;
- 5) Thence with a curve to the right, having a radius of 170.00 feet, an arc length of 73.86 feet, a central angle of 24 deg. 53' 37" and a chord which bears North 8 deg. 37' 37" West, a chord distance of 73.28 feet to a set 3/4-inch iron pipe at the point of tangency;
- 6) North 3 deg. 53' 06" East, a distance of 373.82 feet to a found 5/8-inch rebar at a point of curvature;

Thence with a curve to the right, having a radius of 10.00 feet, an arc length of 15.67 feet, a central angle of 89 deg. 45' 30" and a chord which bears North 48 deg. 45' 51" East, a chord distance of 14.11 feet, to a found 5/8-inch rebar, at the point of tangency and being in the Southerly right-of-way of said Allendale Drive;

Thence South 86 deg. 21' 24" East, along the Southerly right-of-way line of Allendale Drive, a distance of 314.56 feet, returning to the point of Beginnings, and containing 8.758 acres of land more or less, being subject to all restrictions, easements, and right-of-way of previous record.

Basis of Bearings:

The centerline of Livingston Avenue was assigned a bearing of South 86 deg. 30' East as shown on the record Plat of Berwick Arms, of record in Plat Book 34, Page 79.

Tract III:

Being located in Section 17, Township 12, Range 21, Refugee Lands, more particularly described as follows:

Beginning at a 3/4-inch iron pipe found in the Northerly right-of-way line of Allendale Drive and at the Southwest corner of Lot 11, as the same is shown upon the recorded Plat of "Berwick Arms", of record in Plat Book 34, Page 79;

Thence North 86 deg. 21' 24" West, with the Northerly right-of-way line of Allendale Drive as the same is shown upon the recorded Plat of "Dedication of Rand Avenue and Allendale Drive", of record in Plat Book 32, Page 104, a distance of 259.05 feet to a found 5/8-inch rebar at a point of curvature;

Thence with a curve to the right, having a radius of 10.00 feet, an arc length of 15.69 feet, a central angle of 89 deg. 53' 30" and a chord which bears North 41 deg. 24' 39" West, a chord distance of 14.13 feet to a found 5/8-inch rebar, at the point of tangency and being in the Easterly right-of-way of said Rand Avenue, as the same is shown upon the recorded Plat of "Dedication of Rand Avenue and Allendale Drive", of record in Plat Book 32, Page 104;

Thence North 3 deg. 32' 06" East, along the Easterly right-of-way line of said Rand Avenue, a distance of 110.31 feet to a found 3/4-inch iron pipe at the Southwest corner of Lot 49, as the same is shown upon the recorded Plat of "Barnett Heights Amended", of record in Plat Book 27, Page 74;

Thence South 86 deg. 15' 31" East, with the Southerly line of said Lot 49, and the Southerly line of Lot 42, as the same is shown upon the recorded Plat of "Barnett Heights Amended", of record in Plat Book 27, Page 74, a distance of 269.26 feet to a found 3/4-inch iron pipe at the Northwest corner of said Lot 11;

Thence South 3 deg. 38' 36" West, with the Westerly line of said Lot 11, a distance of 119.83 feet, returning to the point of Beginning, and containing 0.920 acres of land, more or less, being subject to all restrictions, easements, and right-of-way of previous records.

Basis of Bearings:

The centerline of Livingston Avenue was assigned a bearing of South 86 deg. 30' East as shown on the record plat of Berwick Arms, of record in Plat Book 34, Page 79.

Tract IV:

Being located in Section 17, Township 12, Range 21, Refugee Lands, and being all of Reserve "D", as the same is shown upon the recorded Plat of "Berwick Arms", of record in Plat Book 34, Page 79, more particularly described as follows:

Beginning at a 3/4-inch iron pipe found at the Southeast corner of Lot 14, as the same is shown upon the recorded Plat of "Berwick Arms", of record in Plat Book 34, Page 79;

Thence North 33 deg. 29' 10" East, with the Easterly line of said Lot 14, a distance of 119.46 feet to a set 3/4-inch iron pipe, at the Northeast corner of said Lot 14 and in the Southerly right-of-way line of Allendale Drive, as the same is shown upon the recorded Plat of "Dedication of Rand Avenue and Allendale Drive", of record in Plat Book 32, Page 104;

Thence with a curve to the right, having a radius of 125.00 feet, an arc length of 48.10 feet, a central angle of 22 deg. 02' 54" and a chord which bears South 45 deg. 40' 01" East, a chord distance of 47.81 feet to set 3/4-inch iron pipe at a point of tangency;

Thence South 34 deg. 38' 34" East, along the Southerly right-of-way line of Allendale Drive, a distance of 113.06 feet to a set 3/4-inch iron pipe at a point of curvature;

Thence with a curve to the right, having a radius of 125.00 feet, an arc length of 9.08 feet, a central angle of 4 deg. 09' 46", and a chord which bears South 32 deg. 33' 41" East, a chord distance of 9.08 feet, to a set 3/4-inch iron pipe, at the Northeast corner of Lot 15, as the same is shown upon the recorded Plat of "Berwick Arms", of record in Plat Book 34, Page 79;

Thence South 58 deg. 52' 15" West, with the Northerly line of said Lot 15, a distance of 119.90 feet, to a set 3/4-inch iron pipe, at the Northwest corner of said Lot 15 and in the Easterly line of an 8.758 acre tract, conveyed to Colonial Village Berwick, LLC, of record in Instr. No. 200605020083518.

Thence North 34 deg. 38' 34" West, with the Easterly line of said 8.758 acre tract, a distance of 117.21 feet, returning to the point of Beginning, and containing 0.396 acres of land, more or less, being subject to all restrictions, easements, and rights-of-way of previous record.

Basis of Bearings:

The centerline of Livingston Avenue was assigned a bearing of South 86 deg. 30' East as shown on the record Plat of Berwick Arms, of record in Plat Book 34, Page 79.

Tract V (Parcel I):

Being located in Section 17, Township 12, Range 21, Refugee Lands, and being all of Lot 11, as the same is shown upon the recorded Plat of "Berwick Arms", of record in Plat Book 34, Page 79, more particularly described as follows:

Beginning at a 3/4-inch iron pipe found in the Northerly right-of-way line of Allendale Drive as the same is shown upon the recorded Plat of "Dedication of Rand Avenue and Allendale Drive", of record in Plat Book 32, Page 104 and at the Southwest corner of said Lot 11;

Thence North 3 deg. 38' 36" East, with the Westerly line of said Lot 11, a distance of 119.83 feet to a found 3/4-inch iron pipe in the Southerly line of Lot 42, as the same is shown upon the recorded Plat of "Barnett Heights Amended", of record in Plat Book 27, Page 74;

Thence South 86 deg. 15' 31" East, with the Southerly line of said Lot 42, a distance of 65.00 feet to a found 3/4-inch pinch top at the Southeast corner of said Lot 42 and being in the Westerly right-of-way line of Olney Drive;

Thence South 3 deg. 38' 36" West, with the Westerly right-of-way line of Olney Drive, a distance of 109.71 feet to a set 3/4-inch iron pipe at a point of curvature;

Thence with a curve to the right, having a radius of 10.00 feet, an arc length of 15.71 feet, a central angle of 90 deg. 00' 00" and a chord which bears South 48 deg. 38' 36" West, a chord distance of 14.14 feet to a set 3/4-inch iron pipe at a point of tangency in the Northerly right-of-way line of said Allendale Drive;

Thence North 86 deg. 21' 24" West, with the said Northerly right-of-way line of Allendale Drive, a distance of 55.00 feet, returning to the point of Beginning, and containing 0.178 acres of land, more or less, being subject to all restrictions, easements, and right-of-way, of previous records.

Basis of Bearings:

The centerline of Livingston Avenue was assigned a bearing of South 86 deg. 30' East as shown on the record Plat of Berwick Arms, of record in Plat Book 34, Page 79.

Tract V (Parcel II):

Being located in Section 17, Township 12, Range 21, Refugee Lands, and being all of Lots 1 through 10, inclusive, together with Reserve "B" and Reserve "C", as the same is shown upon the recorded Plat of "Berwick Arms", of record in Plat Book 34, Page 79, more particularly described as follows:

Beginning at a 3/4-inch pinch top found in the Easterly right-of-way line of Olney Drive and at the Southwesterly corner of Lot 41, as the same is shown upon the recorded Plat of "Barnett Heights Amended", of record in Plat Book 27, Page 74;

Thence South 86 deg. 15' 31" East, with the Southerly line of said Lot 41, and the Southerly line of a 0.616 acre tract (by survey), conveyed to Colonial Village Berwick, LLC, of record in Instr. No. 200605020083518, a distance of 323.47 feet to a set 3/4 iron pipe, in the Westerly right-of-way line of New York Central R.R.;

Thence South 34 deg. 36' 28" East, with the Westerly right-of-way line of New York Central R.R., a distance of 284.14 feet to a found 3/4 iron pipe in the Westerly right-of-way line of New York Central R.R. and at the Northwest corner of a 2.868 acre tract (by survey), conveyed to Colonial Village Berwick, LLC, of record in Instr.

No. 200701110006858;

Thence South 3 deg. 26' 36" West, with the Westerly line of said 2.868 acre tract (by survey), a distance of 694.80 feet to a set 3/4 iron pipe, at the Southwest corner of the said 2.868 acre tract, and being in the Northerly right-of-way line of Livingston Avenue;

Thence North 86 deg. 30' 00" West, along the North right-of-way line of Livingston Avenue, a distance of 125.02 feet to a set 3/4 iron pipe at a point of curvature;

Thence with a curve to the right, having a radius of 20.00 feet, an arc length of 31.40 feet, a central angle of 89 deg. 56' 36" and a chord which bears North 41 deg. 31' 42" West, a chord distance of 28.27 feet to a set 3/4 iron pipe at a point of tangency in the Easterly right-of-way line of Brookway Road;

Thence with the Easterly right-of-way line of Brookway Road the following Six (6) courses:

- 1) North 3 deg. 26' 36" East, a distance of 516.11 feet, to a found 5/8-inch rebar at a point of curvature;
- 2) Thence with a curve to the left, having a radius of 175.00 feet, an arc length of 116.33 feet, a central angle of 38 deg. 05' 10" and a chord which bears North 15 deg. 35' 59" West, a chord distance of 114.20 feet, to a found 5/8-inch rebar at a point of tangency;
- 3) North 34 deg. 38' 34" West, a distance of 113.06 feet, to found 5/8-inch rebar at a point of curvature;
- 4) Thence with a curve to the left, having a radius of 175.00 feet, an arc length of 157.95 feet, a central angle of 51 deg. 42' 50" and a chord which bears North 60 deg. 29' 59" West, a chord distance of 152.64 feet, to a set 3/4 iron pipe at a point of tangency;
- 5) North 86 deg. 21' 24" West, a distance of 99.89 feet, to a set 3/4 iron pipe at a point of curvature;
- 6) Thence with a curve to the right, having a radius of 10.00 feet, an arc length of 15.71 feet, a central angle of 90 deg. 00' 00" and a chord which bears North 41 deg. 21' 24" West, a chord distance of 14.14 feet, to a set 3/4 iron pipe at a point of tangency in the Easterly right-of-way line of Olney Drive;

Thence North 3 deg. 38' 36" East, with the said Easterly right-of-way line of Olney Drive, a distance of 109.63 feet, returning to the point of Beginning, and containing 3.978 acres of land, more or less, being subject to all restrictions, easements, and rights-of-ways of previous record.

Basis of Bearings:

The centerline of Livingston Avenue was assigned a bearing of South 86 deg. 30' East as shown on the record Plat of Berwick Arms, of record in Plat Book 34, Page 79.

Tract VI (Parcel I):

Being located in Section 17, Township 12, Range 21, Refugee Lands, and being all of Lots 12 through 14, inclusive, as the same is shown upon the recorded Plat of "Berwick Arms", of record in Plat Book 34, Page 79, more particularly described as follows:

Beginning at a 3/4 iron pipe found in the Southerly right-of-way line of Allendale Drive and at the Northwest corner of said Lot 12;

Thence South 86 deg. 21' 24" East, with the said Southerly right-of-way line of Allendale Drive, a distance of

164.83 feet to a found 5/8 rebar at a point of curvature;

Thence with a curve to the right, having a radius of 125.00 feet, an arc length of 64.72 feet, a central angle of 29 deg. 39' 57" and a chord which bears South 71 deg. 31' 26" East, a chord distance of 64.00 feet, a set 3/4-inch iron pipe at the Northwest corner of a 0.396 acre tract, conveyed to Colonial Village Berwick, LLC, of record in Instr. No. 200605020083518;

Thence South 33 deg. 29' 10" West, with the Westerly line of said 0.396 acre tract, a distance of 119.46 feet, to a found 3/4 iron pipe, in the Easterly line of a 8.758 acre tract, conveyed to Colonial Village Berwick, LLC, of record in Instr. No. 200605020083518;

Thence North 86 deg. 21' 24" West, along the Northerly line of said 8.758 acre tract, a distance of 167.26 feet to a found 3/4 iron pipe at the Southwest corner of said Lot 12;

Thence North 3 deg. 38' 36" East, along the Westerly line of said Lot 12, a distance of 120.00 feet, returning to the point of Beginning, and containing 0.546 acres of land, more or less, being subject to all restrictions, easements, and rights-of-ways of previous record.

Basis of Bearings:

The centerline of Livingston Avenue was assigned a bearing of South 86 deg. 30' East as shown on the record Plat of Berwick Arms, of record in Plat Book 34, Page 79.

Tract VI (Parcel II):

Being located in Section 17, Township 12, Range 21, Refugee Lands, and being all of Lots 15 through 23, inclusive, as the same is shown upon the recorded Plat of "Berwick Arms", of record in Plat Book 34, Page 79, more particularly described as follows:

Beginning at a 3/4 iron pipe set in the Westerly right-of-way line of Brookway Road and at the Northeast corner of said Lot 15, and at the Southeasterly corner of a 0.396 acre tract, conveyed to Colonial Village Berwick, LLC, of record in Instr. No. 200605020083518;

Thence with the Westerly right-of-way line of said Brookway Road, the following Three (3) courses;

1) Thence with a curve to the right, having a radius of 125.00 feet, an arc length of 74.01 feet, a central angle of 33 deg. 55' 24" and a chord which bears South 13 deg. 31' 06" East, a chord distance of 72.93 feet to a found 5/8-inch rebar at a point of tangency;

2) South 3 deg. 26' 36" West, a distance of 516.03 feet to a set 3/4-inch iron pipe at a point of curvature;

3) Thence with a curve to the right, having a radius of 20.00 feet, an arc length of 31.44 feet, a central angle of 90 deg. 03' 24" and a chord which bears South 48 deg. 28' 18" West, a chord distance of 28.30 feet to set 3/4-inch iron pipe at a point of tangency, in the Northerly right-of-way line of Livingston Avenue;

Thence North 86 deg. 30' 00" West, along the North right-of-way line of Livingston Avenue, a distance of 99.96 feet to a found 3/4-inch pinch top at the Southeast corner of an 8.758 acre tract, conveyed to Colonial Village Berwick, LLC, of record in Instr. No. 200605020083518;

Thence North 3 deg. 26' 36" East, with the Easterly line of said 8.758 acre tract, a distance of 537.65 feet to a set 3/4-inch iron pipe, at the Northwest corner of said Lot 15 and at the Southwest corner of said 0.396 acre tract;

Thence North 58 deg. 52' 15" East, with the Southerly line of said 0.396 acre tract, a distance of 119.90 feet, returning to the point of Beginning, and containing 1.579 acres of land more or less, being subject to all restrictions, easements, and rights-of-ways of previous record.

Basis of Bearings:

The centerline of Livingston Avenue was assigned a bearing of South 86 deg. 30' East as shown on the record Plat of Berwick Arms, of record in Plat Book 34, Page 79.

Tract VII:

Being located in Section 17, Township 12, Range 21, Refugee Lands, and being all of Reserve "A", as the same is shown upon the recorded Plat of "Berwick Arms", of record in Plat Book 34, Page 79, more particularly described as follows:

Beginning at a 3/4-inch iron pipe set, at the Southeasterly corner of Lot 41, as the same is shown upon the recorded Plat of "Barnett Heights Amended", of record in Plat Book 27, Page 74, and in the Northerly line of a 3.978 acre tract, conveyed to Colonial Village Berwick, LLC, of record in Instr. No. 200605020083518;

Thence North 16 deg. 33' 39" West, with the Easterly line of Lots 36 through 41, inclusive, as the same is shown upon the recorded Plat of "Barnett Heights Amended", of record in Plat Book 27, Page 74, a distance of 369.86 feet to a found 3/4 iron pipe at an angle point in said Lot 36;

Thence South 83 deg. 58' 10" East, with the Easterly line of said Lot 36, a distance of 4.49 feet to a found 3/4 iron pipe in the Westerly right-of-way line of New York Central R.R.;

Thence South 34 deg. 36' 26" East, with the said Westerly right-of-way line of New York Central R.R., a distance of 442.08 feet, to a 3/4-inch iron pipe set at the Northeast corner of said 3.978 acre tract;

Thence North 86 deg. 15' 31" West, with the Northerly line of the said 3.978 acre tract, a distance of 150.44 feet, returning to the point of Beginning, and containing 0.616 acres of land, more or less, being subject to all restrictions, easements, and rights-of-way of previous record.

Basis of Bearings:

The centerline of Livingston Avenue was assigned a bearing of South 86 deg. 30' East as shown on the record Plat of Berwick Arms, of record in Plat Book 34, Page 79.

GUARANTOR'S AFFIDAVIT

THIS GUARANTOR'S AFFIDAVIT (this "Affidavit") is given as of August __, 2020, by ARON PURETZ and ORON ZARUM (individually and collectively, "Guarantor") as an inducement for EF SBC 2015-2 LLC, a Delaware limited liability company (the "Lender") to close a certain loan (the "Loan") as provided for under that certain \$15,500,000.00 Promissory Note of even date herewith (the "Note") by APEX COLONIAL OH LLC, a Delaware limited liability company in favor of the Lender. Any capitalized term herein but not defined shall have the meaning ascribed to such term in the Note.

The undersigned, being first duly sworn, on oath, represents, warrants, states and agrees as follows:


1. Guarantor has executed a Guaranty of Payment and Performance in favor of Lender of even date herewith (the "Guaranty").
2. Guarantor is solvent; Guarantor is not contemplating and has not recently contemplated bankruptcy (nor is there any prospect of such); and there are no outstanding liens, suits, garnishments, bankruptcies or court actions which could render Guarantor not solvent.
3. There has been no material adverse change in the condition of Guarantor from that heretofore disclosed to Lender in writing or in other supporting data submitted therewith.
4. All of Guarantor's representations, warranties, and covenants contained in this Affidavit, the Guaranty, and all other documents and instruments executed and delivered by Guarantor in furtherance thereof or pursuant thereto, if any (the "Loan Documents"), are true and correct as of the date hereof.
5. All documents necessary to authorize Guarantor to execute the Guaranty and other Loan documents to which he is a party, specifically including but not limited to the Environmental Compliance and Indemnity Agreement, and to engage in any transaction or business in connection with which the Loan is made have been duly authorized, executed and filed.
6. Guarantor acknowledges that, except as expressly set forth in the Guaranty, no representations of any kind or character have been made to Guarantor by the Lender to induce Guarantor to execute and deliver this Affidavit, the Guaranty, or any other Loan Documents to which he is a party, if any. Guarantor further acknowledges that Guarantor has had an adequate opportunity to have this Affidavit, the Guaranty, each of the Loan Documents, and any other documents executed and delivered in connection with the Loan reviewed by an attorney or representative of Guarantor's choice acting on Guarantor's behalf, that the contents of this Affidavit, the Guaranty, the Loan Documents, and any other documents executed and delivered in connection with the Loan have been explained to Guarantor, that Guarantor understand the contents hereof and thereof, and that Guarantor signed this Affidavit, the Guaranty, and any other documents executed and delivered by Guarantor in connection with the Loan voluntarily.
7. If any representation, warranty or statement of Guarantor contained in this Affidavit proves to be untrue in any material respect, then Guarantor agrees to hold harmless and indemnify the Lender from and against any and all indemnified losses which the Lender may suffer resulting from, arising out of, relating to, or caused by such untrue representation, warranty or statement, which foregoing indemnification provision is in addition to, and not in derogation of, any statutory, equitable, or

common law right or remedy the Lender may have for breach of representation, warranty, statement or covenant or otherwise may have under any of the Loan Documents.

[END OF TEXT; SIGNATURE PAGE FOLLOWS]

EXECUTED AND DELIVERED as of the day and year first above written.

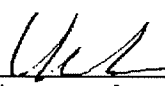
GUARANTOR:


ARON PURETZ

STATE OF NJ

COUNTY OF OCOC

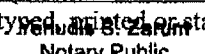
The foregoing instrument was acknowledged before me this 26th day of August, 2020, by ARON PURETZ, who is personally known to me or who has produced Driver's License (type of identification) as identification.


Signature of person taking acknowledgment

Yehuda Zeman
Name of acknowledger typed, printed or stamped

Notary Public

Title or rank


Notary Public
State of New Jersey

My Commission Expires August 15, 2021

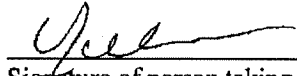
GUARANTOR:


ORON ZARUM

STATE OF NJ

COUNTY OF Ocean

The foregoing instrument was acknowledged before me this 26th day of August, 2020, by ORON ZARUM, who is personally known to me or who has produced NJ Drivers License (type of identification) as identification.


Signature of person taking acknowledgment

Yehudis Zarum
Name of acknowledger typed, printed or stamped

Notary Public	Yehudis S. Zarum	Yehudis S. Zarum
Title or rank	Notary Public	Notary Public
	State of New Jersey	State of New Jersey
	My Commission Expires August 15, 2021	My Commission Expires August 15, 2021

EXHIBIT 3

(Above Space for Recorder's Use)

OPEN-END MORTGAGE, SECURITY AGREEMENT AND FIXTURE FILING

(Maximum Principal Indebtedness Not to Exceed \$15,500,000.00)

THIS INSTRUMENT PREPARED BY
AND AFTER RECORDING RETURN TO:

SAUL EWING ARNSTEIN & LEHR
ATTN: ANTHONY KANG
701 BRICKELL AVENUE, 17th FLOOR
MIAMI, FLORIDA 33131

Addresses: See Exhibit B attached hereto
Parcel Numbers: See Exhibit B attached hereto

OPEN-END MORTGAGE, SECURITY AGREEMENT AND FIXTURE FILING

This Open-End Mortgage, Security Agreement and Fixture Filing (this "Mortgage"), dated August __, 2020, between APEX COLONIAL OH LLC, a Delaware limited liability company, whose mailing address is 2365 Nostrand Avenue, Brooklyn, New York 11210 (hereinafter "Mortgagor") and EF SBC 2015-2 LLC, a Delaware limited liability company, the address of which is 53 Forest Avenue, Old Greenwich, CT 06870 (hereinafter "Mortgagee").

W I T N E S S E T H:

MORTGAGOR HEREBY IRREVOCABLY GRANTS, TRANSFERS, ASSIGNS AND CONVEYS TO MORTGAGEE WITH WARRANTY COVENANTS:

All that certain property and all buildings and all other improvements now thereon or hereafter constructed thereon situated in the County of Franklin, State of Ohio, described in Exhibit "A" attached hereto and made a part hereof by reference (the "Premises");

TOGETHER WITH all of the following which, with the Premises, are herein collectively called the "Mortgaged Property":

- (a) All appurtenances and all estate and rights of Mortgagor in and to the Premises;
- (b) All water and water rights, ditch and ditch rights, reservoir and reservoir rights, stock or interests in irrigation or ditch companies, royalties, minerals, oil and gas rights, lease or leasehold interests owned by Mortgagor, now or hereafter used or useful in connection with, appurtenant to or related to the Premises;
- (c) All right, title and interest of Mortgagor in and to all streets, roads and public places, opened or proposed, and all easements and rights of way, public or private, now or hereafter used in connection with the Premises;
- (d) All improvements, fixtures, equipment, furniture and other articles of personal property, and all rights therein, now owned or hereafter acquired by Mortgagor and affixed to, placed upon or used in connection with the Premises, and all replacements thereof and substitutions therefor (as further described in Paragraph A.7); and
- (e) All awards, payments or other amounts, including interest thereon, which may be made with respect to the Mortgaged Property as a result of injury to or decrease in the value of the Mortgaged Property or as a result of the exercise of the power of condemnation or eminent domain.
- (f) All rights to the rents, issues and profits of the Mortgaged Property as well as the fees, charges, accounts, or other payments for the use or occupancy of rooms and other public facilities (provided, however, that the Mortgagor shall be entitled to the collect and retain the above until a Default has occurred hereunder).

FOR THE PURPOSE OF SECURING, in such order of priority as Mortgagee may elect, the full and prompt payment, observance and performance when due, of all present and future obligations and indebtedness of Mortgagor to Mortgagee, whether at the stated time, by acceleration or otherwise, howsoever created, arising or evidenced, whether direct or indirect, absolute or contingent, whether or not of the same or similar class or of like kind to any indebtedness incurred contemporaneously with the execution of this Mortgage, and whether now or hereafter existing, or due or to become due, including without limitation, the following:

(a) Obligations under Promissory Note. Payment of any and all amounts owed by Mortgagor under, in connection with and/or pursuant to the indebtedness evidenced by that certain Promissory Note of even date herewith, in the original principal sum of Fifteen Million Five Hundred Thousand and No/100 Dollars (\$15,500,000.00) (the "Note"), with interest thereon according to the provisions thereof, and all obligations of Mortgagor under, in connection with and/or pursuant to this Mortgage granted by Mortgagor as security for payment of the foregoing indebtedness; and

(b) All Sums in Connection with Note and Mortgage. All sums advanced or expenses or costs paid or incurred (including without limitation reasonable attorneys' fees and other legal expenses) by Mortgagee pursuant to or in connection with the Note or this Mortgage, plus any interest on such sums, expenses or costs; and

(c) Any Changes to Note. Any extensions, amendments, modifications, changes, substitutions, restatements, renewals or increases or decreases to the Note and all other indebtedness secured by this Mortgage; and

(d) Any Additional Loans. Such additional sums with interest thereon as may be hereafter borrowed from Mortgagee, its successors or assigns, by the then record owner or owners of the Mortgaged Property when evidenced by another promissory note or notes, which are by the terms thereof secured by this Mortgage; and

(e) Any and All Other Indebtedness. All other indebtedness, obligations and liabilities of any kind, of Mortgagor to Mortgagee, now or hereafter existing, absolute or contingent, direct or indirect, joint and/or several, due or not due, secured or unsecured, arising by operation of law or otherwise including indebtedness, obligations and liabilities to Mortgagee of Mortgagor as a member of any partnership, syndicate or association or other group and whether incurred by Mortgagor as principal, surety, endorser, guarantor, accommodation party or otherwise, and any obligations which give rise to an equitable remedy for breach of performance if such breach gives rise to an obligation by Mortgagor to pay Mortgagee.

This Mortgage shall secure all of such obligations up to the maximum principal amount of Fifteen Million Five Hundred Thousand and No/100 Dollars (\$15,500,000.00) (except as may otherwise be set forth in this Mortgage (e.g., in Paragraph D.6 hereof)) and such amount may be advanced and repaid in whole or in part and again advanced and repaid in whole or in part from time to time without affecting the

existence or priority of the lien of this Mortgage and this total shall limit only the total amount of principal which may be secured by this Mortgage at any one time.

A. PROVISIONS RELATING TO THE MORTGAGED PROPERTY

A.1 Taxes and Governmental Claims and Other Liens. Mortgagor agrees to pay or cause to be paid, prior to the date they would become delinquent if not paid, all taxes, assessments and governmental charges whatsoever levied upon or assessed or charged against the Mortgaged Property, including, without limitation, all water and sewer taxes, assessments and other charges, taxes, impositions and rents, if any. Mortgagor shall give to Mortgagee a receipt or receipts, or certified copies thereof, evidencing every such payment by Mortgagor, not later than forty-five (45) days after such payment is made but not later than forty-five (45) days after such payment would become delinquent if not paid. Mortgagor also agrees to promptly and faithfully pay, satisfy, and obtain the release of all other claims, liens, encumbrances, and contracts, affecting or purporting to affect the title to, or which may be or appear to be liens on, the Mortgaged Property or any part thereof, and all costs, charges, interest and penalties on account thereof, including, without limitation, the claims of all persons supplying labor or materials to the Mortgaged Property and to give Mortgagee, upon demand, evidence satisfactory to Mortgagee of the payment, satisfaction or release thereof.

A.2 Insurance. Mortgagor agrees to keep the Mortgaged Property insured against loss or damage by fire and other casualty with extended coverage and against any other risks or hazards which in the opinion of Mortgagee should be insured against, and in any case against all risks which persons engaged in the same business as is carried on at the Premises customarily insure against, with the minimum amount of said insurance to be no less than the amount of the Note. Mortgagor shall also carry insurance against the risk of rental or business interruption at the Premises, in an amount deemed satisfactory by Mortgagee. All of such insurance shall be placed with a company or companies and in such form and with such endorsements as may be approved or required by Mortgagee. Loss under all such insurance shall be payable to Mortgagee in accordance with this Paragraph, and all such insurance policies shall be endorsed with a standard, non-contributory mortgagee's clause in favor of Mortgagee. Mortgagor shall also carry public liability insurance, in such form, amount and with such companies as Mortgagee may from time to time require, naming Mortgagee as an additional insured. The policy or policies evidencing all insurance referred to in this Paragraph and receipts for the payments of premiums thereon shall be delivered to and held by Mortgagee. All such insurance policies shall contain a provision requiring at least thirty (30) days notice to Mortgagee prior to any cancellation or modification. Mortgagor shall give Mortgagee satisfactory evidence of renewal of all such policies with premiums paid at least thirty (30) days before expiration. Mortgagor agrees to pay all premiums on such insurance as they become due, and will not permit any condition to exist on or with respect to the Mortgaged Property which would wholly or partially invalidate any insurance thereon. Mortgagee shall not by the fact of approving, disapproving, accepting, preventing, obtaining or failing to obtain any such insurance, incur any liability for the form or legal sufficiency or absence of insurance contracts, solvency of insurers, or payment of losses, and Mortgagor hereby expressly assumes full responsibility therefor and all liability, if any, thereunder. Effective upon any default hereunder, all of Mortgagor's right, title and interest in and to all such policies and any unearned premiums paid thereon are hereby assigned to Mortgagee, which shall have the right, but not the obligation, to assign the same to any purchaser of the Mortgaged Property at

any foreclosure sale or other disposition thereof. The requirements of Mortgagee for insurance under the provisions of this Paragraph may be modified or amended in whole or in part by Mortgagee, in its reasonable discretion, and Mortgagor agrees, upon any expiration of any existing policy or policies of insurance, to provide a replacement policy or policies which shall meet such amended or modified insurance standards. In the event of a loss, Mortgagor shall give immediate written notice to the insurance carrier and Mortgagee. Mortgagor hereby appoints Mortgagee its attorney-in-fact for the purposes hereinafter set out, and authorizes and empowers Mortgagee, at Mortgagee's option and in Mortgagee's sole discretion as attorney-in-fact for Mortgagor, to make proof of loss (unless there is not an Event of Default, in which case Borrower may make proof of loss subject to Mortgagor reasonable approval), to adjust and prosecute any action arising from such insurance policies, to collect and receive insurance proceeds, and to deduct therefrom Mortgagee's expenses incurred in the collection of such proceeds. Mortgagor understands and agrees that the power of attorney hereby granted to Mortgagee is a power coupled with an interest and is irrevocable until Mortgagee's interest hereunder is terminated by the payment and performance of all of Mortgagor's obligations and indebtedness secured hereby. Mortgagor further authorizes Mortgagee to hold all or any portion of such proceeds to be used to reimburse Mortgagor for the costs of reconstruction or repair of the Mortgaged Property unless Mortgagor elects to apply all or any portion of such proceeds to the payment of all and no less than all the sums secured by this Mortgage, whether or not then due, in which case Mortgagor shall use the proceeds to pay off the sums secured by this Mortgage. In the event Mortgagee elects to require repair, restoration or rebuilding as provided herein and Mortgagor does not elect to pay off the sums secured by this Mortgage (the "Reconstruction Option"), Mortgagor shall deposit with Mortgagee any funds which may be required for such repair, restoration or rebuilding in excess of the net insurance proceeds received, which funds shall be deposited with Mortgagee and held and disbursed by Mortgagee, together with the net insurance proceeds received, in accordance with the usual practices of Mortgagee or other lenders making construction loans. Subject to election of the Reconstruction Option, in the event Mortgagee elects to require repair, restoration or rebuilding hereunder, within thirty (30) days after notice to Mortgagor of such election Mortgagor shall deliver to Mortgagee plans and specifications for such rebuilding, restoration or repair acceptable to Mortgagee, which acceptance shall be evidenced by Mortgagee's written consent thereto, and Mortgagor shall thereafter commence the rebuilding, restoration or repair and complete same, all in substantial accordance with the plans and specifications, within four (4) months after the date of the damage or destruction. Subject to election of the Reconstruction Option in the event Mortgagee elects to require rebuilding, restoration or repair hereunder and Mortgagor fails to comply with the requirements of this Mortgage with respect thereto, Mortgagee may accelerate payment of the indebtedness secured hereby and demand immediate payment of all of such indebtedness, and may apply the net insurance proceeds received, to the payment of such indebtedness. If the insurance proceeds are applied to the payment of the sums secured by this Mortgage, any such application of proceeds to principal shall be in such order as Mortgagee may determine and, if after so applying such insurance proceeds Mortgagee reasonably determines the remaining security to be inadequate to secure the remaining indebtedness, Mortgagor shall upon written demand from Mortgagee prepay on principal such an amount as will reduce the remaining indebtedness to a balance for which adequate security is present.

A.3 Condemnation and Other Awards. If the Mortgaged Property or any part thereof is taken or diminished in value, or if a consent settlement is entered, by or under threat of such proceeding, the award or settlement payable to Mortgagor by virtue of its interest in the Mortgaged Property shall be, and

by these presents is, assigned, transferred and set over unto, and to be held by Mortgagee subject to the lien and security interest of this Mortgage, and disbursed at Mortgagee's option, (a) to hold all or any portion of such proceeds to be used to reimburse Mortgagor for the costs of reconstruction or repair of the Mortgaged Property, or (b) to apply all or any portion of such proceeds to the payment of the sums secured by this Mortgage, whether or not then due.

In the event Mortgagee elects to require repair, restoration or rebuilding as provided herein, Mortgagor shall deposit with Mortgagee any funds which may be required for such repair, restoration or rebuilding in excess of the net funds received in respect of the taking or diminution in value, which funds shall be deposited with Mortgagee and held and disbursed by Mortgagee, together with the net funds received in respect of the taking or diminution in value, in accordance with usual practices of Mortgagee or other lenders making construction loans. In the event Mortgagee elects to require repair, restoration or rebuilding hereunder, within thirty (30) days after notice to Mortgagor of such election Mortgagor shall deliver to Mortgagee plans and specifications for such rebuilding, restoration or repair acceptable to Mortgagee, which acceptance shall be evidenced by Mortgagee's written consent thereto, and Mortgagor shall thereafter commence the rebuilding, restoration or repair and complete same, all in substantial accordance with the plans and specifications, within four (4) months after the date of the taking or diminution in value. In the event Mortgagee elects to require rebuilding, restoration or repair hereunder and Mortgagor fails to comply with the requirements of this Mortgage with respect thereto, Mortgagee may accelerate payment of the indebtedness secured hereby and demand immediate payment of all of such indebtedness, and may apply the net funds received in respect of the taking or diminution in value to the payment of such indebtedness. If the proceeds are applied to the payment of the sums secured by this Mortgage, any such application of proceeds to principal shall be in such order as Mortgagee may determine and, if after so applying such proceeds Mortgagee reasonably determines the remaining security to be inadequate to secure the remaining indebtedness, Mortgagor shall upon written demand from Mortgagee prepay on principal such an amount as will reduce the remaining indebtedness to a balance for which adequate security is present.

A.4 Condition of Mortgaged Property.

(a) Mortgagor agrees to properly care for and keep the Mortgaged Property in good condition and repair. Without the prior written consent of Mortgagee, Mortgagor agrees not to cause or permit any building or improvement which constitutes a part of the Premises to be removed, demolished or structurally altered, in whole or in part, or any fixture or article of personal property which constitutes a portion of the Mortgaged Property to be removed (other than in the ordinary course of Mortgagor's business), damaged or destroyed. Without limiting the foregoing, Mortgagor shall obtain Mortgagee's consent and approval prior to obtaining a demolition permit for the Mortgaged Property or materially removing or demolishing any improvements on the Premises, which Mortgagor acknowledges may not be given by Mortgagee until the Loan is paid in full. Mortgagee consents to the removal and replacement of fixtures and articles of personal property if such fixtures or articles of personal property are simultaneously replaced with fixtures and articles of equal or greater value, that are free and clear of all liens other than that of Mortgagee's, and if the value of the Mortgaged Property is not diminished thereby. Mortgagor agrees not to abandon the Premises or leave the Premises unprotected, unguarded, vacant or deserted, and not to cause or permit any waste to the buildings, improvements or fixtures constituting any

portion of the Mortgaged Property. Mortgagor agrees (i) to repair, restore and reconstruct in good and workmanlike manner to the condition required hereby any improvement which constitutes a part of the Mortgaged Property which may be damaged or destroyed, in accordance with the provisions of Paragraph A.2 hereof (provided however, Mortgagor shall not be required to so repair, restore or reconstruct if Mortgagee elects under Paragraph A.2 to retain the insurance proceeds and apply them to the sums secured by this Mortgage, and further provided, if Mortgagee elects to use such proceeds to reimburse Mortgagor for the costs of such repair, restoration or reconstruction, provided however, if such proceeds are not adequate, Mortgagor shall deposit with Mortgagee such additional funds as may be required to accomplish such repair, restoration or reconstruction); (ii) not to permit any lien of mechanics or materialmen to attach to the Mortgaged Property, provided, however, that the filing of any such lien shall not constitute a default hereunder if Mortgagor shall provide an adequate bond with respect to any such lien, in accordance with applicable law or shall provide indemnification with respect to such lien with security therefor acceptable to Mortgagee in Mortgagee's sole discretion; (iii) to comply with all laws, ordinances, regulations or governmental orders affecting the Mortgaged Property or requiring any alterations or improvements thereto; (iv) not to commit, suffer or permit any act with respect to the Mortgaged Property in violation of law or of any covenants, prior encumbrances, conditions or restrictions affecting the Mortgaged Property; (v) to make or cause to be made from time to time all needed or proper replacements, repairs and renewals; (vi) to perform all obligations and pay all amounts as and when required to protect Mortgagor's interest in the Premises; and (vii) to do any other act or acts, all in a timely and proper manner which from the character or use of the Mortgaged Property may be reasonably necessary to protect and preserve the value of the Mortgaged Property.

(b) Mortgagee may, during normal business hours, upon reasonable notice to Mortgagor and subject to applicable tenant leases for the Mortgaged Property regarding a right of entry, enter and inspect or protect the Mortgaged Property, in person or by agent, in such manner and to such extent as it may deem necessary. In the event that Mortgagor fails to maintain the Mortgaged Property in the manner specified herein, Mortgagee may, at its option, undertake such repairs or maintenance, for the account of Mortgagor, as Mortgagee deems necessary. The cost of any such repairs or maintenance undertaken by Mortgagee shall become immediately due and payable by Mortgagor to Mortgagee and Mortgagee shall be reimbursed therefor in accordance with the provisions of Paragraph B.2 hereof. The right of Mortgagee to undertake such repairs or maintenance shall be optional, shall not impose any duties on Mortgagee, and shall not be deemed to cure any Default under this Mortgage for failure to maintain the Mortgaged Property in accordance with the covenants herein.

(c) Mortgagee shall have the right at Mortgagor's expense to appraise the Mortgaged Property at any time during the term of this Mortgage: (1) if an Event of Default has occurred, (2) if an event has occurred which in the reasonable discretion of Mortgagee requires an additional appraisal of the Mortgaged Property, or (3) if the Borrower has exercised its right to extend the Maturity Date as defined in the Note. Borrower agrees to provide any information reasonably requested by Mortgagee in order to perform the appraisal and permit Mortgagee's designated appraiser access to the property or other assets at any reasonable time for the purpose of conducting the appraisal. If at any time during the term of this Mortgage the principal balance of the Note exceeds seventy-five percent (75%) of the appraised value of the Mortgaged Property, Mortgagor, upon request by Mortgagee, will be required to reduce the principal balance outstanding in order to attain a maximum loan to value of seventy-five percent (75%). Failure to

reduce the principal balance as requested by Mortgagee will result in an Event of Default. In the event of a conflict between this section and the Note, the terms and conditions of the Note shall govern and control.

A.5 Alterations and Additions. Mortgagor agrees that, as to any alteration, addition, construction or improvement to be made upon the Premises, all plans and specifications therefor shall be prepared by or on behalf of Mortgagor and shall be subject to Mortgagee's written approval in advance of the commencement of work, which approval shall not be unreasonably withheld or delayed so long as such alteration, addition construction or improvement increases the value of the Premises; once commenced, all work thereunder shall be prosecuted with due diligence; all construction thereof will be in substantial accordance with the plans and specifications so approved and will comply with all laws, ordinances or regulations made or promulgated by any governmental agency or other lawful authority and with the rules of the applicable National Fire Protection Association. Should Mortgagor at any time fail to comply with any notice or demand by any governmental agency, which alleges a failure to comply with any such plan, specification, law, ordinance or regulation, such failure shall, at Mortgagee's option, constitute a default hereunder.

A.6 Status of Title. Mortgagor represents and warrants that it is the lawful owner of the Mortgaged Property in fee simple, subject to no liens or encumbrances, except for covenants, conditions, restrictions, easements and rights-of-way of record, if any. Mortgagor represents and warrants that it has full right, power and authority to convey and mortgage the Mortgaged Property and to execute this Mortgage. Mortgagor also agrees to protect, preserve and defend its interest in the Mortgaged Property and title thereto, including full performance of any prior claim or lien; to appear and defend this Mortgage in any action or proceeding affecting or purporting to affect the Mortgaged Property, the lien of this Mortgage thereon or any of the rights of Mortgagee hereunder, and to pay all costs and expenses incurred by Mortgagee in connection with any such action or proceeding, including, without limitation, reasonable attorneys' fees, whether any such action or proceeding progresses to judgment and whether brought by or against Mortgagee, Mortgagor, or the Mortgaged Property. Mortgagee shall be reimbursed for any such costs and expenses in accordance with the provisions of Paragraph B.2 hereof. Mortgagee may, but shall not be under any obligation to, appear or intervene in any such action or proceeding and retain counsel therein and defend the same or otherwise take such action therein as it may deem advisable or may settle or compromise the same and, for any of such purposes, may expend and advance such sums of money as it may deem necessary, and Mortgagee shall be reimbursed therefor in accordance with the provisions of Paragraph B.2 hereof.

A.7 Personal Property Security Interest.

(a) This Mortgage shall cover, and Mortgagor hereby grants to Mortgagee a security interest in, all property now or hereafter affixed or attached or incorporated upon the Mortgaged Property including without limitation all furnaces, heating equipment, air conditioners, fans, water heaters, pipes, ducts, wiring and electrical fixtures, conduits, plumbing, sinks, partitions, restroom fixtures, light fixtures, windows and window coverings, and floor, ceiling and wall coverings, and all replacements thereof and substitutions therefor, which, to the fullest extent permitted by law shall be deemed fixtures and a part of the real property. In addition, this Mortgage shall cover, and Mortgagor hereby grants to Mortgagee a

security interest in: (i) all building materials, fixtures, equipment and other personal property to be incorporated into any improvements constructed on the Premises; (ii) all interest of Mortgagor in all goods, materials, supplies, fixtures, equipment, machinery, furniture and furnishing and other personal property which are now or hereafter affixed to, placed upon or used in connection with, the Premises, and all replacements thereof, and substitutions therefor; (iii) all interest of Mortgagor in all rents, issues and profits, as well as the fees, charges, accounts, or other payments for the use or occupancy of rooms and other public facilities, and all accounts, contract rights, general intangibles, chattel paper, instruments, documents, notes, drafts, letters of credit, insurance policies, insurance and condemnation awards and proceeds, tradenames, trademarks and service marks, arising from or related to the Premises and any other business conducted on the Premises; (iv) all of Mortgagor's interest in and rights pursuant to any franchise or licensing agreement or other similar agreement with respect to the Premises but only to the extent such grant does not violate any such agreement; and (v) all books, records and files relating to, any of the foregoing. The security interests hereby granted are first and prior liens on the property described. To the extent any property covered by this Mortgage consists of rights in action or personal property covered by the Uniform Commercial Code, this Mortgage constitutes a Security Agreement and is intended to create a security interest in such property in favor of Mortgagee. This Mortgage shall be self-operative with respect to such property, but Mortgagor agrees to execute and deliver on demand such security agreements, financing statements and other instruments as Mortgagee may request in order to manifest or perfect the lien hereof more specifically upon any of such property. If the lien of this Mortgage on any property is subject to a prior security agreement covering such property, then in the event of any default hereunder, all the right, title and interest of Mortgagor in and to any and all deposits made in connection with the transaction whereby such prior security agreement was made is hereby assigned to Mortgagee, together with the benefit of any payments now or hereafter made in connection with such transactions.

(b) Mortgagor agrees that all property of every nature and description, whether real or personal covered by this Mortgage, together with all personal property covered by any separate security interests granted to Mortgagee, are encumbered as one unit, and that upon default by Mortgagor under the Note, or under this Mortgage or any security agreement given pursuant to this Paragraph, this Mortgage and such security interest, at Mortgagee's option, may be foreclosed and the security sold in the same proceedings, and all of the Premises (both realty and personalty) may, at Mortgagee's option, be sold as such in one unit as a going business. The filing of any financing statement relating to any personal property or rights or interest generally or specifically described herein shall not be construed to diminish or alter any of Mortgagee's rights or priorities hereunder.

A.8 Severability. Should any term, provision, covenant or condition of this Mortgage be held to be void or invalid, the same shall not affect any other term, provision, covenant or condition of this Mortgage, but the remainder hereof shall be effective as though such term, provision, covenant or condition had not been contained herein.

A.9 Usury Disclaimer. Any provision contained herein or in the Note or in any other instrument now or hereafter evidencing, securing or otherwise relating to any indebtedness secured by this Mortgage to the contrary notwithstanding, neither Mortgagee nor the holder of any such indebtedness shall be entitled to receive or collect, nor shall Mortgagor be obligated to pay, interest on any of the secured indebtedness in excess of the maximum rate of interest at the particular time in question, if any,

which, under applicable law, Mortgagee is then permitted to charge Mortgagor (herein the "Maximum Rate") provided that the Maximum Rate shall be automatically increased or decreased as the case may be, without notice to Mortgagor from time to time as of the effective time of each change in the Maximum Rate, and if any provision herein or in the Note or in such other instrument shall ever be construed or held to permit the collection or to require the payment of any amount of interest in excess of that permitted by applicable law, the provisions of this Paragraph A.9 shall control and shall override any contrary or inconsistent provision herein or in the Note or in such other instrument. The intention of the parties being to conform strictly to the usury limitations under applicable law, the Note, this Mortgage, and each other instrument now or hereafter evidencing or relating to any indebtedness secured by this Mortgage shall be held subject to reduction to the maximum amount allowed under said applicable law as now or hereafter construed by the courts having jurisdiction, and any payment by Mortgagor over the Maximum Rate shall be applied to reduce the principal amount due and owing to Mortgagee.

A.10 Impounds.

(a) Mortgagor shall deposit with Mortgagee or Mortgagee's designee on each monthly payment date as set forth in the Note one-twelfth (1/12) of the reasonably estimated amount of real estate taxes assessed or to be assessed against the Mortgaged Property for the then current year (in addition to the amount of the Tax Reserve as set forth in the Note). Mortgagor shall, if requested by Mortgagee, deposit with Mortgagee or Mortgagee's designee on each monthly payment date as set forth in the Note one-twelfth (1/12) of the reasonably estimated total of all insurance premiums required to be paid for the then current year, as estimated by Mortgagee. Provided there exists no Default, Mortgagee shall use said moneys in actual payment of such taxes or insurance premiums (to the extent Mortgagee has requested impounds for insurance premiums), but nothing in this paragraph shall release Mortgagor from its obligations to pay said taxes as the same become due and payable under the provisions hereof and to maintain in force all insurance policies as required hereby. All impounds required under this paragraph shall be deposited in a non-interest bearing account of Mortgagee, to be withdrawn by Mortgagee at such times and in such amounts as required in order to timely make payment of such taxes or insurance premiums (to the extent Mortgagee has requested impounds for insurance premiums), subject to the terms hereof.

(b) The amounts held by Mortgagee pursuant to this Paragraph A.10 shall not constitute a trust fund and may be commingled with other monies held by Mortgagee. All amounts deposited under this Paragraph A.10 are hereby assigned to Mortgagee as additional security for all indebtedness secured by this Mortgage, and so long as any Default as set forth herein including a default in the payment of any money or the performance of any covenant or obligation herein contained or secured hereby exists, then any deposits made by Mortgagor under this paragraph may, at the option of Mortgagee, be applied to the payment of principal and interest or other indebtedness secured hereby, in lieu of being applied to any of the purposes of this paragraph A.10 previously stated.

A.11 Environmental Representations and Warranties. Mortgagor represents and warrants to Mortgagee that: (a) during the period of Mortgagor's ownership of the Mortgaged Property, there has not been, nor will there be in the future, any use, generation, manufacture, storage, treatment, disposal, release, or threatened release of any hazardous waste or substance by any person or entity on, or about the

Mortgaged Property except in accordance with Environmental Laws; (b) Mortgagor has no knowledge of, or reason to believe that there has been, except as previously disclosed to and acknowledged by Mortgagee in writing, (i) any use, generation, manufacture, storage, treatment, disposal, release, or threatened release of any hazardous waste or substance by any prior owners or occupants of the Mortgaged Property in violation of Environmental Laws or (ii) any actual or threatened litigation or claims of any kind by any person or entity relating to such matters; and (c) except as previously disclosed to and acknowledged by Mortgagor in writing, (i) neither Mortgagor nor any tenant, contractor, agent, or other authorized user of the Mortgaged Property shall use, generate, manufacture, store, treat, dispose of, or release any hazardous waste or substance on, under, or about the Mortgaged Property in violation of Environmental Laws and (ii) all such activity shall be conducted in full compliance with all applicable federal, state, and local laws, regulations and ordinances. Mortgagor, at any time during usual business hours, authorizes Mortgagee and its agents to enter upon the Mortgaged Property to make such inspections and tests, including, without limitation, intrusive tests, at Mortgagor's expense, as Mortgagee may deem appropriate to determine compliance with this section of the Mortgage. Any inspections or tests made by Mortgagee shall be for Mortgagee's purposes only and shall not be construed to create any responsibility or liability on the part of Mortgagee. Mortgagor hereby (a) releases and waives any future claims against Mortgagee for indemnity or contribution in the event Mortgagor becomes liable for cleanup or other costs associated therewith, and (b) agrees to indemnify and hold harmless Mortgagee against any and all claims, losses, liabilities, damages, penalties, and expenses, which Mortgagee may directly or indirectly sustain or suffer resulting from a breach of this section of the Mortgage or as a consequence of any use, generation, manufacture, storage, disposal, release, or threatened release occurring prior to Mortgagor's ownership or interest in the Mortgaged Property, whether or not the same was or should have been known to Mortgagor. The provisions of this paragraph of the Mortgage, including the obligation to indemnify, shall survive the payment of the indebtedness secured herein and the satisfaction and reconveyance of the lien of this Mortgage and shall not be affected by Mortgagee's acquisition of any interest in the Mortgaged Property, whether by foreclosure or otherwise. The terms "hazardous waste," "disposal," "release," and "threatened release," as used in this Mortgage shall have the same meanings as set forth in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq. ("CERCLA"), the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499 ("SARA") the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Resource Conservation Act, 49 U.S.C. Section 6901 et seq., as amended, or other applicable state or federal laws, rules or regulations adopted pursuant to any of the foregoing. The term "hazardous waste" and "hazardous substance" shall also include, without limitation, petroleum and petroleum by-products and asbestos.

A.12 Time of the Essence. Time of each payment and performance of each of Mortgagor's obligations pursuant to the Note, this Mortgage, and each other instrument or obligation of Mortgagor secured by this Mortgage or given in connection with this Mortgage is specifically declared to be of the essence.

B. GENERAL PROVISIONS.

B.1 Non-Waiver. Mortgagee's acceptance of any sum after the same is due shall not constitute a waiver of the right either to require prompt payment, when due, of all other sums hereby secured or to declare a Default as herein provided. The acceptance by Mortgagee of any sum in an amount less than the sum then due shall be deemed an acceptance on account only and upon condition that it shall not constitute a waiver of the obligation of Mortgagor to pay the entire sum then due, and Mortgagor's failure to pay said entire sum then due shall be and continue to be a default notwithstanding such acceptance of such amount on account, as aforesaid, and Mortgagee shall be at all times thereafter and until the entire sum then due shall have been paid, and notwithstanding the acceptance by Mortgagee thereafter of further sums on account, or otherwise, entitled to exercise all rights in this Mortgage conferred upon Mortgagee, upon the occurrence of a default, and the right to proceed with a sale under any notice of default and election to sell shall in no way be impaired, whether any of such amounts are received prior or subsequent to such notice. Consent by Mortgagee to any transaction or action which is subject to consent or approval of Mortgagee hereunder shall not be deemed a waiver of the right to require such consent or approval to future or successive transactions or actions.

B.2 Substitute Performance by Mortgagee. Should Mortgagor fail to pay or perform when required hereunder any obligation of Mortgagor hereunder, or if any action or proceeding is commenced which affects the Mortgaged Property or title thereto or the interest of Mortgagee therein, including but not limited to, eminent domain, insolvency, code enforcement, or arrangements or proceedings involving bankruptcy, insolvency or reorganization, Mortgagee may, but shall not be obligated to, without regard to the adequacy of its security and without prejudice to its right to declare a Default hereunder, make such appearances, disburse such sums or take such actions as Mortgagee reasonably deems necessary to protect Mortgagee's interest, including, but not limited to disbursement of attorneys' fees and entry upon the Mortgaged Property to make repairs without notice or demand to or upon Mortgagor. Mortgagor hereby grants to Mortgagee an easement to enter upon the Property at any time, which easement shall continue for the duration of this Mortgage. The payment by Mortgagee of any delinquent tax, assessment or governmental charge, or any lien or encumbrance which Mortgagee in good faith believes may be prior to the lien of this Mortgage, or any insurance premium for insurance which Mortgagor is obligated to provide hereunder but which Mortgagee in good faith believes has not been supplied, shall be conclusive between Mortgagor and Mortgagee as to the propriety and amount so paid. Mortgagee shall be subrogated to all rights, equities and liens discharged by any such expenditure. After any Default hereunder and whether or not any action is instituted to enforce any provision of this Mortgage or the Note, Mortgagor promises to pay to Mortgagee, as incurred, all reasonable sums incurred by Mortgagee for attorneys' fees and costs to enforce this Mortgage or the Note or to defend any claims arising from this Mortgage or the Note. Any amounts so paid pursuant to this Paragraph B.2, or the cost of such performance, together with all costs and expenses incurred by Mortgagee in connection with such payment or performance, and any amounts for which Mortgagor is specifically obligated to reimburse Mortgagee pursuant to provisions hereof, including reasonable attorneys' fees and interest on all such amounts at the Default Interest Rate, as described in the Note, from the date paid by Mortgagee until repaid to Mortgagee, shall be payable by Mortgagor to Mortgagee immediately upon notice to Mortgagor of the amount owing, without further demand, shall be secured by this Mortgage and shall be added to the judgment in any suit brought by Mortgagee against Mortgagor. Failure to pay any such amount within

ten (10) days after notice to Mortgagor of the amount owing shall constitute a Default hereunder and Mortgagee may, at its option, accelerate and demand full payment of all amounts secured hereby.

B.3 Powers of Mortgagee. At any time or from time to time, without liability therefor and without notice, without affecting the personal liability of any person or entity for the payment of the indebtedness secured hereby and without affecting the lien of this Mortgage upon the Mortgaged Property for the full amount of all amounts secured hereby, Mortgagee may (a) release all or any part of the Mortgaged Property, (b) consent to the making of any map or plat thereof, (c) join in granting any easement thereon or in creating any covenants or conditions restricting use or occupancy thereof, or (d) join in any extension agreement or in any agreement subordinating the lien or charge hereof.

B.4 Certain Definitions. The term "Mortgagee" means the original Mortgagee hereunder, its successors or assigns, and any future owner and holder, including pledgee, of the Note. All obligations of each Mortgagor hereunder are joint and several, and this Mortgage in all its parts applies to and binds the heirs, personal representatives, administrators, executors, successors and assigns of all and each of the parties hereto. If Mortgagor is two or more entities or persons, the term "Mortgagor" as used herein shall refer to them collectively, as well as individually.

B.5 Amendment. No alteration, amendment or waiver of this Mortgage, or the Note shall be effective unless in writing and signed by the parties sought to be charged or bound thereby.

B.6 Applicable Law; Service of Process. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS MORTGAGE, EXCEPT WITH RESPECT TO MATTERS RELATING TO THE CREATION, PERFECTION AND PROCEDURES RELATING TO THE ENFORCEMENT OF THE LIENS AND SECURITY INTERESTS CREATED BY THIS MORTGAGE, THIS MORTGAGE SHALL BE GOVERNED BY, AND BE CONSTRUED IN ACCORDANCE WITH, THE LAWS OF NEW YORK, IT BEING UNDERSTOOD THAT, EXCEPT AS EXPRESSLY SET FORTH ABOVE IN THIS SECTION AND TO THE FULLEST EXTENT PERMITTED BY THE LAW OF OHIO, THE LAW OF THE STATE OF NEW YORK SHALL GOVERN ALL MATTERS RELATING TO THIS MORTGAGE AND ALL OF THE INDEBTEDNESS OR OBLIGATIONS ARISING HEREUNDER OR THEREUNDER.

Any legal suit, action or proceeding against Mortgagor or Mortgagee arising out of or relating to this Mortgage may at Mortgagee's option be instituted in any federal or state court in the City of New York, County of New York or in a court of record of the State of Ohio in Franklin County, Ohio or in the United States District Court for the Southern District of Ohio, and Mortgagor waives any objections which it may now or hereafter have based on venue and/or forum non conveniens of any such suit, action or proceeding, and Mortgagor hereby irrevocably submits to the jurisdiction of any such court in any suit, action or proceeding. Mortgagor does hereby designate and appoint:

Chaim C. Zlotowitz, Esq.
Law Offices of Chaim C. Zlotowitz, Esq. PLLC
140A Washington Avenue, Suite 203
Cedarhurst, New York 11516

as its authorized agent to accept and acknowledge on its behalf service of any and all process which may be served in any such suit, action or proceeding in City of New York, County of New York, and agrees that service of process upon said agent at said address and written notice of said service mailed or delivered to Mortgagor in the manner provided herein shall be deemed in every respect effective service of process upon Mortgagor in any such suit, action or proceeding in the State of New York. Mortgagor (i) shall give prompt notice to Mortgagee of any changed address of its authorized agent hereunder, (ii) may at any time and from time to time designate a substitute authorized agent with an office in New York (which substitute agent and office shall be designated as the person and address for service of process), and (iii) shall promptly designate such a substitute if its authorized agent ceases to have an office in the State of New York or is dissolved without leaving a successor.

B.7 Statement Fee. For any statement requested by Mortgagor regarding the obligations and indebtedness secured by this Mortgage, or regarding the amounts held in any impound or reserve fund established hereunder, Mortgagee may charge a reasonable fee, not to exceed the greater of (i) \$25.00 (other than a request for a final payoff statement, the fee for which may exceed this amount); or (ii) any maximum amount provided by any applicable law at the time of the request therefor.

B.8 Notices.

(a) All notices required or permitted to be given hereunder shall be delivered in person or by United States mail, postage prepaid, registered or certified with return receipt requested. If any written notice is mailed, it shall be deemed effective on the earlier of actual receipt or on the third (3rd) calendar day following the date of mailing. Notice given in person shall be effective only if, and when, received. The addresses of the parties for delivery of notices shall be the addresses set forth above.

(b) Any party may change its address for notice hereunder to any other location within the continental United States by giving ten (10) days notice to other parties in the manner set forth above.

B.9 Representations and Warranties of Mortgagor. Mortgagor and each signatory who signs on Mortgagor's behalf hereby represents and warrants as follows:

(a) That this Mortgage, the Note and all other documents executed and delivered to Mortgagee in connection herewith were executed in accordance with the requirements of law and are valid, binding and enforceable in accordance with their terms.

(b) That the execution of this Mortgage, the Note and any other document executed and delivered to Mortgagee in connection herewith, and the full and complete performance of the provisions hereof and thereof, will not result in any breach of, or constitute a default under any indenture, mortgage, bank loan or credit agreement or other agreement or instrument to which Mortgagor is a party or by which Mortgagor is bound, and will not result in the creation of any lien, charge or encumbrance (other than those in favor of Mortgagee) upon any property or assets of Mortgagor.

(c) That as of the date of execution of this Mortgage, Mortgagor is the owner of the Mortgaged Property.

(d) To the best of Mortgagor's knowledge, the improvements on the Premises, existing and proposed, and their intended use will, when completed, comply fully with all applicable environmental, air quality, zoning, planning, building, subdivision and other governmental laws and requirements. Mortgagor specifically warrants that the existing improvements on each property listed on Exhibit "A" attached hereto and made a part hereof by reference, complies with all local zoning ordinances.

(e) The Premises are composed of one or more whole tax parcels with a separate tax assessment, independent of any land or improvements not encumbered by this Mortgage.

(f) There is no litigation pending or, to the best of Mortgagor's knowledge, threatened against the Mortgaged Property. There is no litigation pending or, to the best of Mortgagor's knowledge, threatened against Mortgagor, which might, so far as Mortgagor can now reasonably foresee, have a material adverse effect on Mortgagor's ability to repay the Note or to perform the provisions of this Mortgage or of any other document delivered to Mortgagee in connection herewith. Mortgagor has disclosed all litigation pending and threatened against Mortgagor to Mortgagee in writing, and will disclose all future such litigation to Mortgagee in writing within thirty (30) days of its receipt of notice thereof.

(g) To the best of Mortgagor's knowledge, the Mortgaged Property complies with all applicable subdivision laws, ordinances, regulations, rules and other requirements.

(h) Mortgagor is not in default with respect to any existing indebtedness or obligation.

(i) Mortgagor has the power and authority to enter into and perform all terms and conditions of this Mortgage, the Note, and all other documents executed in connection with this transaction, and to incur the obligations herein and therein provided for.

(j) Unless previously disclosed to Mortgagee in writing, Mortgagor has not made any agreement or taken any action which may cause anyone to become entitled to a commission or finder's fee as a result of the making of any loan to Mortgagor by Mortgagee.

These representations and warranties may be relied upon by Mortgagee with or without investigation by Mortgagee and they shall survive any such investigation, and shall continue and may be relied upon by Mortgagee until all obligations secured by this Mortgage have been paid in full.

B.10 Extensions and Modifications. From time to time, without affecting the obligation of Mortgagor or Mortgagor's successors or assigns to pay the sums secured by this Mortgage and to observe the obligations of Mortgagor contained herein, without affecting the guaranty of any person, corporation, partnership or other entity for payment of the indebtedness secured hereby, and without affecting the lien

or priority of lien hereof on the Mortgaged Property, Mortgagee may, at Mortgagee's option, without giving notice to or obtaining the consent of Mortgagor, Mortgagor's successors or assigns or of any other lienholders or guarantors, and without liability on Mortgagee's part, extend the time for payment of said indebtedness or any part thereof, reduce the payments thereon, release anyone liable on any of said indebtedness, accept a renewal note or notes therefor, modify the terms and time of payment of said indebtedness, release from this Mortgage any part of the Mortgaged Property, take or release other or additional security, reconvey any part of the Mortgaged Property, consent to the granting of any easement or dedication, join in any extension or subordination agreement and agree in writing with any person obligated to pay the same to modify the rate of interest or period of amortization of any indebtedness secured hereby or change the amount of the installments payable thereon. Mortgagor shall pay Mortgagee a reasonable service charge, together with such title insurance premiums and attorneys' fees as may be incurred by Mortgagee in connection with any such action.

B.11 Waiver by Mortgagor. Mortgagor waives any requirement of presentment, demand for payment, notice of nonpayment or late payment, protest, notice of protest, notice of dishonor, and all other formalities. Mortgagor waives all rights and/or privileges it might otherwise have to require Mortgagee to proceed against or to pursue any remedy available to Mortgagee in any particular manner or order as to any particular collateral, person or entity under any legal or equitable doctrine or principle including, without limitation, marshalling of assets and/or suretyship principles, and further agrees that Mortgagee may proceed against any or all of the assets encumbered hereby or by any other security document or instrument in the Event of Default in such order and manner as Mortgagee in its sole discretion may determine. Any Mortgagor that has signed this Mortgage as a surety or accommodation party, or that has subjected its property to this Mortgage to secure the indebtedness of another, hereby expressly waives any defense arising by reason of the cessation from any cause whatsoever of the liability of Mortgagor, and waives the benefit of any statutes of limitation affecting the enforcement hereof.

B.12 Corrections. Mortgagor will, upon request of Mortgagee, promptly correct any defect, error or omission which may be discovered in the contents of this Mortgage or in the execution or acknowledgement hereof, and will execute, acknowledge and deliver such further documents and do such further acts as may be necessary or as may be reasonably requested by Mortgagee to carry out more effectively the purposes of this Mortgage, to subject to the liens and security interests hereby created any of Mortgagor's properties, rights or interest covered or intended to be covered hereby, and to perfect and maintain such liens and security interests.

B.13 Mortgagee Indemnification. Mortgagor shall and does hereby agree to indemnify and to hold Mortgagee and Mortgagee's affiliates and parent companies, and all of its and their respective officers, directors, employees and agents (the "Indemnified Parties"), harmless from and against all claims, demands, liabilities, losses or damages (including all related costs, expenses, and reasonable attorney's fees) asserted against, imposed on or incurred by the Indemnified Parties in connection with or as a result of this Mortgage or the exercise of any rights or remedies under this Mortgage or by reason of any alleged obligations or undertakings of Mortgagee to perform or discharge any of the terms, covenants or agreements contained in this Mortgage unless the claims, demands, liabilities, losses or damages (including all related costs, expenses, and reasonable attorney's fees) are caused by Mortgagee's gross negligence or willful or intentional acts. Should Mortgagee incur any such liability, the amount thereof,

together with interest thereon at the Default Interest Rate stated in the Note, shall be secured hereby and Mortgagor shall reimburse the Mortgagee therefor immediately upon demand.

B.14 Late Payment Charge. Mortgagor acknowledges that late payment to Mortgagee will cause Mortgagee to incur costs not contemplated by this Mortgage. Such costs include, without limitation, processing and accounting charges. Therefore, if any payment required by the Note or this Mortgage is not received by Mortgagee within ten (10) days after the due date, Mortgagee hereby may assess a late charge in the amount of five percent (5.0%) of the unpaid amount of the payment, or the maximum permitted by applicable law, whichever is less. In the event of a conflict between this section and the Note the Note shall govern and control.

The parties agree that this late charge represents a reasonable sum considering all of the circumstances existing on the date of this Mortgage and represents a fair and reasonable estimate of the costs that Mortgagee will incur by reason of the late payment. The parties further agree that proof of actual damages would be costly or inconvenient. Acceptance of any late charge shall not constitute a waiver of the Default with respect to the overdue amount, and shall not prevent Mortgagee from exercising any of the other rights and remedies available to Mortgagee.

B.15 Exhibits. All of the provisions in each of the attached Exhibits are incorporated herein by this reference for all purposes.

C. DEFAULT PROVISIONS.

C.1 Events of Default. Any of the following shall constitute a "Default" (or an "Event of Default") hereunder:

(a) The failure of Mortgagor to pay in full any payment required under the Note or on any other indebtedness to Mortgagee or any payment required hereunder or under any other agreement securing the Note;

(b) The filing of any petition, or the commencement of any case or proceeding, or the entry of any order for relief, under the Federal Bankruptcy Code or any other federal or state law relating to insolvency, bankruptcy, reorganization, or composition of debts by Mortgagor or any guarantor or endorser of the Note or any other obligation of Mortgagor to Mortgagee; or any adjudication that Mortgagor or any such guarantor or endorser is insolvent or bankrupt;

(c) Intentionally deleted;

(d) (i) The filing of any petition or the commencement of any case or proceeding described in subparagraph C.1(b) above against Mortgagor or against any endorser or guarantor of the Note or any other obligation of Mortgagor to Mortgagee, unless such petition and the case or proceeding initiated thereby are dismissed within thirty (30) days from the date of such filing; the filing of an answer by Mortgagor or such endorser or guarantor admitting the allegations of any such petition; or (ii) the appointment of or the taking of possession by a custodian, trustee or receiver for all or any assets of

Mortgagor or any such endorser or guarantor, unless such appointment is vacated or dismissed or such possession is terminated within thirty (30) days from the earlier of the date of such appointment or commencement of such possession, but not later than five (5) days before the proposed sale of any assets of Mortgagor or any such endorser or guarantor by such custodian, trustee or receiver;

(e) The insolvency of Mortgagor or of any guarantor or endorser of the Note or any other obligation of Mortgagor to Mortgagee; or the execution by Mortgagor or any such guarantor or endorser of an assignment for the benefit of creditors; or the convening by Mortgagor or any such guarantor or endorser of a meeting of its creditors, or any class thereof, for purposes of effecting a moratorium upon or extension or composition of its debts; or the failure of Mortgagor or of any such guarantor or endorser to pay its debts as they mature; or if Mortgagor or any such guarantor or endorser is generally not paying its debts as they mature;

(f) The admission in writing by Mortgagor or any endorser or guarantor of the Note or any other obligation of Mortgagor to Mortgagee that it is unable to pay its debts as they mature or that it is generally not paying its debts as they mature;

(g) The liquidation, termination or dissolution of Mortgagor or any guarantor or endorser of the Note or any other obligation of Mortgagor to Mortgagee which are corporations, partnerships or joint ventures;

(h) Prior to full payment of all amounts secured by this Mortgage and all conditions provided herein to satisfy this Mortgage in full, unless otherwise permitted under the Loan Documents, the sale, lease, exchange, conveyance or transfer, of any legal or equitable interest in and to the Mortgaged Property, or the agreement to do so; or the mortgage, assignment, pledge or encumbrance, either voluntarily or involuntarily, or the agreement to do so, without the prior written consent of Mortgagee being first obtained, or the levy, attachment, foreclosure, or seizure, of (i) any right, title or interest of Mortgagor or of any successor to Mortgagor, in and to the Mortgaged Property; or (ii) any material portion of the assets of Mortgagor or of any successor to Mortgagor;

(i) The falsity or misleading nature of any representation or warranty contained herein or any representation or warranty made to Mortgagee in the other Loan Documents, including, without limitation, (i) those representations and warranties made in that certain Guarantor's Affidavit dated of even date herewith given by each guarantor of the Loan in favor of Mortgagee, (iii) those representations and warranties made in that certain Mortgagor's Representations, Warranties and Affidavit dated of even date herewith given by Mortgagor in favor of Mortgagee, or (iii) any misrepresentation concerning the financial condition or credit standing of either Mortgagor or any endorser or guarantor of the Note or any other obligation of Mortgagor to Mortgagee;

(j) The failure of Mortgagor to make any deposit of funds required hereunder or under the Note within the time period provided herein or in the Note, or in the absence of such a provision, within five (5) business days after written demand therefor from Mortgagee;

(k) The existence of any encroachment upon the Premises which has occurred without the approval of Mortgagee and which is not removed or corrected within thirty (30) days after its creation, or if litigation to remove or correct such encroachment is not instigated by Mortgagor within such thirty (30) day period and thereafter diligently prosecuted;

(l) The filing of any claim of lien against the Premises, any improvements thereon or any part thereof, or any interest or right made appurtenant thereto or the service on Mortgagee, as a disburser, of any notice to withhold funds and the continued maintenance of said claim of lien or notice to withhold for a period of ten (10) business days without discharge or satisfaction thereof or provision therefor satisfactory to Mortgagee in its sole discretion, including the posting of a bond or indemnification satisfactory to Mortgagee;

(m) The obtaining by any person of an order or decree in any court of competent jurisdiction enjoining the construction or development of any improvements needed for the operation of Mortgagor's business on the Premises or enjoining or prohibiting Mortgagor or Mortgagee or both of them from performing any of their agreements or obligations with respect to this Mortgage, which proceedings are not discontinued and such decree is not vacated within fifteen (15) days after the granting thereof;

(n) The demolition, destruction or substantial damage of the Mortgaged Property unless Mortgagor either (i) commences and completes restoration or rebuilding within a reasonable time, not to exceed four (4) months, or (ii) prepays the Note, by the amount equal to the percentage of reduction of leasable or otherwise productive area of the Premises caused by such demolition, destruction or substantial damage; provided, however, that the loan to value ratio after giving effect to the demolition, destruction or substantial damage, the restoration or repair thereof and the prepayment as a result thereof shall not be greater than eighty percent (80%);

(o) The failure of Mortgagor to perform any obligations constituting, set forth in, or relating to (a) this Mortgage, the Note, or any other obligation of Mortgagor to Mortgagee now existing or hereafter arising (b) any other agreement or indebtedness of Mortgagor to any affiliate of Mortgagee now existing or hereafter arising, which failure is not cured within ten (10) days after written notice from Mortgagee to Mortgagor or within such other time as may be specified in such other applicable document irrespective of whether Mortgagee or such affiliate elects pursuant to a provision thereof to declare immediately due and payable the entire unpaid principal sum together with all interest, or other balance thereon, plus any other sums due thereunder;

(p) If Mortgagor is a corporation, the sale, pledge, transfer or assignment by the shareholders of Mortgagor of any shares of the stock of Mortgagor without the prior written consent of Mortgagee or the transfer of more than twenty percent (20%) of the value of Mortgagor's assets not in the ordinary course of Mortgagor's business, the merger or consolidation of Mortgagor with another company or entity, the liquidation of Mortgagor, the issuance of any new stock or warrants, or the transfer of issued and outstanding treasury stock or warrants of Mortgagor. If Mortgagor is a limited liability company, unless otherwise permitted in this Mortgage, the sale, pledge, transfer or assignment of any of the membership interest in Mortgagor by any member holding more than ten (10%) of the overall

membership interest in Mortgagor, or the withdrawal or the admittance of any members into Mortgagor without the prior written consent of Mortgagee. If Mortgagor is a partnership or joint venture, the sale, pledge, transfer or assignment of any of the partners or joint ventures of Mortgagor or any of their partnership or joint venture interest in Mortgagor, or the withdrawal of any general partners or joint venturers, or the admittance of any additional partners into Mortgagor without the prior written consent of Mortgagee;

(q) The death or incompetency of any guarantor if such guarantor is not replaced within thirty (30) days following such death or incompetency by a replacement guarantor satisfactory to Mortgagee; or

(r) Any guaranty of the obligations and indebtedness secured by this Mortgage ceases to be effective, except pursuant to a written release from Mortgagee, or any guarantor denies liability thereunder or any default occurs under any such guaranty; or

C.2 Remedies Upon Default. At any time after a Default hereunder, Mortgagee may, at its option, declare all indebtedness secured by this Mortgage immediately due and payable, and collectible without notice, regardless of maturity, and irrespective of whether Mortgagee exercises such option, and regardless of (i) Mortgagee's delay in exercising such option, (ii) Mortgagee's failure to exercise such option on the occasion of any prior Default or (iii) the adequacy of Mortgagee's security, Mortgagee may, at its option and in its sole discretion, without prior notice or demand to or upon Mortgagor, do any one or more of the following:

(a) Mortgagee may in person or by agent enter upon, take possession of, manage and operate the Mortgaged Property or any part thereof, make repairs and alterations, and do any acts which Mortgagee deems proper to protect the security hereof or to operate and maintain the Mortgaged Property and the business operated thereon; and either with or without taking possession, in its own name, sue for or otherwise collect and receive rents, issues, and profits as well as the fees, charges, accounts, or other payments for the use or occupancy of rooms and other public facilities including those past due and unpaid, and apply the same less costs and expenses of operation and collection, including reasonable attorneys' fees, upon any indebtedness secured hereby, and in such order as Mortgagee may determine. Upon request of Mortgagee, Mortgagor shall assemble and make available to Mortgagee at the Premises any of the Mortgaged Property which has been removed therefrom. The entering upon and taking possession of the Mortgaged Property, the collection of any rents, issues and profits as well as the fees, charges, accounts, or other payments for the use or occupancy of rooms and other public facilities and the application thereof as aforesaid, shall not cure or waive any Default theretofore or thereafter occurring, or affect any notice of Default hereunder or invalidate any act done pursuant to any such notice. Mortgagee or Mortgagee's agent shall have access to the books and records used in the operation and maintenance of the Mortgaged Property and the business operated thereon and shall be liable to account only for those rents, issues and profits as well actually received by Mortgagee. Mortgagee shall not be liable to Mortgagor, anyone claiming by, from, under or through Mortgagor or anyone having an interest in the Mortgaged Property by reason of anything done or undone by Mortgagee. Nothing contained in this paragraph shall require Mortgagee to incur any expense or do any act. If the rents, issues and profits of the Mortgaged Property and the business operated thereon are not sufficient to meet the costs of taking

control of and managing the Mortgaged Property and collecting the rents, issues and profits, any funds expended by Mortgagee for such purposes shall become indebtedness of Mortgagor to Mortgagee secured by this Mortgage. Such amounts, together with interest and attorneys' fees if applicable as provided in Paragraph B.2. hereof, shall be immediately due and payable in accordance with the provisions of Paragraph B.2. hereof. Notwithstanding Mortgagee's continuance in possession or receipt and application of rents, issues or profits, Mortgagee shall be entitled to exercise every right provided for in this Mortgage or by law upon or after the occurrence of a default, including any right to exercise the power of sale. Any of the actions referred to in this Paragraph may be taken by Mortgagee at such time as Mortgagee is so entitled, without regard to the adequacy of any security for the indebtedness hereby secured.

(b) Mortgagee shall, without regard to the adequacy of any security for the indebtedness hereby secured, be entitled to the appointment of a receiver by any court having jurisdiction, without notice, to take possession of and protect the Mortgaged Property and the business operated thereon, and, in Mortgagee's discretion, operate the same, in whole or in part, and collect the rents, issues and profits as well as the fees, charges, accounts, or other payments for the use or occupancy of rooms and other public facilities therefrom.

(c) Mortgagee may bring an action in any court of competent jurisdiction to foreclose this Mortgage or to enforce any of the covenants, agreements or other obligations contained in this Mortgage.

(d) Mortgagee may elect to cause the Mortgaged Property or any part thereof to be sold as follows:

(i) Mortgagee may cause any such sale or other disposition of personal property to be conducted immediately following the expiration of any grace period, if any, herein provided (or immediately upon the expiration of any applicable redemption period), and may cause any such sale of real property to be conducted as soon after foreclosure as is permitted by law, or Mortgagee may delay any such sale or other disposition for such period of time as Mortgagee deems to be in its best interest. Should Mortgagee desire that more than one such sale or other disposition be conducted, Mortgagee may at its option, cause the same to be conducted simultaneously, or successively on the same day, or at such different days or times and in such order as Mortgagee may deem to be in its best interest.

(ii) Should Mortgagee elect to cause any of the Mortgaged Property to be disposed of as personal property as permitted by subparagraph (i) above, it may dispose of any part thereof in any manner now or hereafter permitted by Article 9 of the Uniform Commercial Code or in accordance with any other right or remedy provided by applicable law. Both Mortgagor and Mortgagee shall be eligible to purchase all or any part of such property at any such disposition. Any such disposition may be either by public or private sale or other disposition as Mortgagee may elect in its sole discretion. Mortgagee shall give Mortgagor at least ten (10) days' prior written notice of the time and place of any public sale or other disposition of such property or of the time at or after which any private sale or any other intended disposition is to be made, and if such notice is sent to Mortgagor as provided in Paragraph B.9 hereof, it shall constitute reasonable notice to Mortgagor.

(iii) At the foreclosure sale of the Mortgaged Property which is real property, the Mortgaged Property or any portion thereof specified by Mortgagee shall be sold at public auction to the highest bidder for cash in lawful money of the United States, subject, however, to the provisions of Paragraph C.6 hereof. Any person or entity, including Mortgagee, may purchase at the sale.

(iv) Mortgagee may, in any manner that it deems appropriate, apply the proceeds of any judicial foreclosure sale or sale made pursuant to the power of sale created hereby (to the extent permitted by applicable law) or other disposition of any of the Mortgaged Property hereunder to payment of the following: (1) the expenses of such sale or disposition, together with Mortgagee's fees, costs and expenses and reasonable attorneys' fees incurred by Mortgagee, and the actual cost of publishing, recording, mailing and posting notice; (2) the cost of any search and/or other evidence of title procured in connection therewith and revenue stamps on any deed or conveyance; (3) the payment of the Note secured by this Mortgage; (4) any or all other sums secured by this Mortgage; and (5) the remainder, if any, to the person or persons legally entitled thereto, in the order of their priority.

(e) Mortgagee may take any other appropriate action permitted by applicable law.

C.3 Deficiency; Liabilities and Rights After Default. To the extent permitted by law, Mortgagor shall be and remain liable for any deficiency remaining after sale either pursuant to the Uniform Commercial Code, judicial proceedings, or otherwise. After Default or the occurrence of an event which after the passage of time or giving of notice, or both, could become a Default, Mortgagor shall pay Mortgagee's reasonable attorneys' fees, Mortgagee's fees and its costs and expenses incurred as a result of said Default or other such event, and if suit is brought, all costs of suit, all of which sums shall be secured by this Mortgage. Mortgagor's statutory rights of reinstatement, if any, are expressly conditioned upon Mortgagor's payment of all sums required under the applicable statute and performance of all required acts.

C.4 Right of Setoff. In addition to any rights now or hereafter granted under applicable law and not by way of limitation of any such rights, Mortgagee is hereby authorized by Mortgagor at any time or from time to time, without notice to Mortgagor, any guarantor or endorser of the Note or any other indebtedness or obligation secured by this Mortgage, or any other person, any such notice being hereby expressly waived, to set off any obligations or liabilities any time held or owing by Mortgagee to or for the credit or the account of Mortgagor or any such guarantor or endorser against the obligations and liabilities of Mortgagor or any such guarantor or endorser to Mortgagee, including, but not limited to, all claims of any nature or description arising out of or connected with this Mortgage, the Note or any other indebtedness or obligation secured by this Mortgage, irrespective of whether or not (a) Mortgagee shall have made any demand hereunder or (b) Mortgagee shall have declared the principal of and interest on the Note to be due and owing and although said obligations and liabilities, or any of them, shall be contingent and unmatured.

C.5 Foreclosure Procedure. Mortgagor hereby expressly waives, to the extent permitted by law, any right which it may have to direct the order in which any of the Mortgaged Property shall be sold in the event of any sale or sales pursuant hereto.

C.6 Foreclosure Purchase. Upon any sale of the Mortgaged Property, if the holder of the Note is a purchaser at such sale, it shall be entitled to use and apply all or any portion of the indebtedness then secured by this Mortgage for or in settlement or payment of all or any portion of the purchase price of the Mortgaged Property purchased.

C.7 Cumulative Remedies. No remedy herein conferred upon or reserved to Mortgagee is intended to be exclusive of any other remedy herein or by law provided, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. Every power or remedy given by this Mortgage to Mortgagee, or to which it may be otherwise entitled, may be exercised from time to time and as often as may be deemed expedient by Mortgagee, and Mortgagee may pursue inconsistent remedies. The unenforceability of any provision in this Mortgage shall not affect the enforceability of any other provision herein. If there exists additional security for the performance of the obligations secured hereby, the Mortgagee, at its sole option, and without limiting or affecting any rights or remedies hereunder, may exercise any of the rights and remedies to which it may be entitled hereunder either concurrently with whatever other rights it may have in connection with such other security or in such order as it may determine.

C.8. Marshalling of Assets. Mortgagor agrees that all of the Mortgaged Property and all other collateral or security which may be granted to Mortgagee in connection with the obligations secured by this Mortgage constitutes equal security for all of the obligations secured hereby, and Mortgagor agrees that Mortgagee shall be entitled to sell, retain or otherwise deal with any or all of the Mortgaged Property and all other collateral or security, in any order or simultaneously as Mortgagee shall determine in its sole and absolute discretion, free of any requirement for the marshalling of assets or other restriction upon Mortgagee in dealing with the Mortgaged Property and all other collateral or security.

C.9. Expenses Related to Note and Mortgage. Mortgagor will pay all reasonable expenses, charges, costs and fees relating to the loan evidenced by the Note and secured by this Mortgage or necessitated by the terms of the Note, this Mortgage or any of the other Loan Documents securing the Note, including without limitation, Mortgagee's attorneys' and legal fees and costs (including, but not limited to, all appellate level and post-judgment proceedings) in connection with the negotiation, documentation, modification, workout, collection and enforcement of the Note, this Mortgage and the other Loan Documents, all of Mortgagee's inspection costs, fees and expenses with regard to the Premises, all filing and recording fees, all other expenses incident to the execution and acknowledgment of this Mortgage, all Federal, state, county and municipal taxes, and other taxes (provided Mortgagor shall not be required to pay any income or franchise taxes of Mortgagee), duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of the Note or this Mortgage, all reasonable expenditures and reasonable expenses which may be paid or incurred by or on behalf of Mortgagee including payments to remove or protect against liens, receivers' fees, appraisers' fees, engineers' fees, accountants' fees, independent consultants' fees (including environmental consultants), Mortgagee's out-of-pocket costs and expenses related to any audit or inspection of the Property, and costs for procuring all such abstracts of title, title searches and examination, title insurance policies, surveys and similar data and assurances with respect to title as Mortgagee may deem reasonably necessary either to prosecute any action or to evidence to bidders at any sale of any collateral the true condition of the title to, or the value of, such collateral, and after an Event of Default, provided such costs are permitted by any

applicable statute, outlays for documentary and expert evidence, stenographers' charges, publication costs. All expenses, charges, costs and fees described in the preceding sentence shall be so much additional indebtedness secured hereby, and if not paid in accordance with the terms of the Note and this Mortgage, shall bear interest from the date so incurred until paid at the Default Interest Rate stated in the Note and shall be paid, together with such interest, by Mortgagor forthwith upon demand.

C.10 Protection of Mortgagee's Security. If Mortgagor fails to pay any lien or charge against the Mortgaged Property when due, or otherwise fails to perform any covenant or agreement in the Loan Documents, or upon any event which jeopardizes the value of the Mortgaged Property, then Mortgagee, at its option and sole discretion, may disburse such sums, and take such actions as necessary to protect its interest, including, but not limited to, defending any action or proceeding, disbursing reasonable attorneys' fees and entering upon the Mortgaged Property to make repairs without becoming liable to the Mortgagor or any other person. Any amount disbursed by Mortgagee will be added to the principal of the Note, accrue interest from the date of disbursement at the Default Interest Rate stated in the Note and be secured by this Mortgage. Upon demand, Mortgagor will repay these amounts, together with interest, to Mortgagee.

D. STATE SPECIFIC PROVISIONS.

D.1 Conflict. In the event of any inconsistency between the terms of this Article D and the other terms of this Mortgage, the terms of this Article D shall govern.

D.2 Waiver of Rights of Redemption and Reinstatement. Mortgagor hereby releases and waives, to the fullest extent permitted by law, any and all rights of reinstatement and redemption as may be provided in the Ohio Rules (as hereinafter defined).

D.3 Fixture Filing. It is intended that as to the fixtures, as such term is defined in Ohio Revised Code Section 1309.102(A)(41), that are part of the Premises, this Mortgage will be effective as a continuously perfected financing statement filed pursuant to Ohio Rev. Code Section 1309.515(G) as a fixture filing from the date of the filing of this Mortgage for record with the Recorder of Franklin County, Ohio. In order to satisfy Ohio Revised Code Section 1309.502(A) and Ohio Rev. Code Section 1309.502(B), the following information is hereby provided:

Name of Debtor: APEX COLONIAL OH LLC
Type of Organization: limited liability company
State of Organization: Delaware
Organization Number: 4442049
Name of Secured Party: EF SBC 2015-2 LLC
Address of Secured Party: 53 Forest Avenue, Old Greenwich, CT 06870
Record Owner of Property: APEX COLONIAL OH LLC

D.4 Compliance with Ohio Mortgage Foreclosure Law.

(a) In the event that any provision in this Mortgage shall be inconsistent with any provision of the Ohio Rules of Civil Procedure (herein called the "Ohio Rules") the provisions of the Ohio Rules shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the Ohio Rules.

(b) If any provision of this Mortgage shall grant to Mortgagee (including Mortgagee acting as a mortgagee-in-possession) or a receiver appointed pursuant to the provisions of this Mortgage any powers, rights or remedies prior to, upon or following the occurrence and continuance of an Event of Default which are more limited than the powers, rights or remedies that would otherwise be vested in Mortgagee or in such receiver under the Ohio Rules in the absence of said provision, Mortgagee and such receiver shall be vested with the powers, rights and remedies granted in the Ohio Rules to the full extent permitted by law; provided, however, that with respect to issues relating to the creation, perfection, priority and enforcement of the liens on and security interest in the Mortgaged Property, the laws of the State in which the Mortgaged Property is located shall govern.

D.5 Open-End Mortgage. Mortgagor and Mortgagee intend that this Mortgage shall secure the unpaid balance of advances made by the holder hereof after this Mortgage is delivered to the Franklin County Recorder for record to the fullest extent and with the highest priority contemplated by Section 5301.232 of the Ohio Revised Code. The maximum amount of all advances, in the aggregate and exclusive of interest accrued thereon and protective advances made as contemplated in this Mortgage and in Section 5301.233 of the Ohio Revised Code, which may be outstanding at any time, is Fifteen Million Five Hundred Thousand and No/100 Dollars (\$15,500,000.00).

D.6 Security for Protective Advances. In addition to the advances referred to in Paragraph D.5 hereof, Mortgagee shall have the right, but not the obligation, to make protective advances with respect to the Premises for the payment of taxes, assessments, insurance premiums, maintenance and all other costs incurred for the protection of the Premises as contemplated by Section 5301.233 of the Ohio Revised Code, and such protective advances, together with interest thereon at the Default Interest Rate as set forth in and defined in the Note from the date of each such advance, regardless of the time when such advance is made, until it is repaid in full, shall be secured by this Mortgage to the fullest extent and with the highest priority contemplated by said Section 5301.233.

D.7 Contract of Indebtedness. Mortgagor acknowledges that this Mortgage is a "contract of indebtedness" containing a commitment to pay attorneys' fees that arises in connection with the enforcement of a contract of indebtedness in accordance with Ohio Revised Code Section 1319.02.

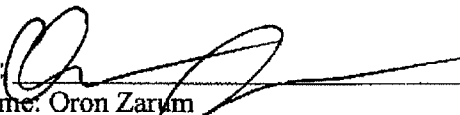
D.8 Mechanics' Lien Law. Mortgagee shall be and hereby is authorized and empowered to do, as mortgagee, all things provided to be done in the mechanics lien laws of the State of Ohio (including Section 1311.14 of the Ohio Revised Code), and all acts amendatory or supplementary thereto.

D.9 No Notice of Commencement. No Notice of Commencement (as defined in Section 1311.04 of the Ohio Revised Code) as to the Premises has been filed or will be filed prior to the recording of this Mortgage.

(EXECUTION PAGE TO FOLLOW)

IN WITNESS WHEREOF, Mortgagor has duly executed this Mortgage on and as of the day and year first above written.

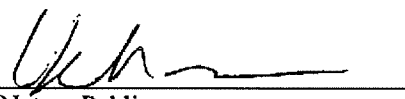
APEX COLONIAL OH LLC, a Delaware limited liability company

By: 
Name: Oron Zarum
Title: Authorized Signatory

STATE OF NJ)
) SS.
COUNTY OF OCCEON)

On the 26 day of August, 2020, before me, the undersigned notary public, personally appeared Oron Zarum, the Authorized Signatory of Apex Colonial OH LLC, a Delaware limited liability company, and proved to me through satisfactory evidence of identification, being (check whichever applies): ☐ driver's license or other state or federal governmental document bearing a photographic image, ☐ oath or affirmation of a credible witness known to me who knows the above signatory, or ☐ my own personal knowledge of the identity of the signatory, to be the person whose name is signed on the preceding Open-End Mortgage, Security Agreement and Fixture Filing, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose in the aforesaid capacity as Authorized Signatory of Mortgagor.

Yehudis S. Zarum
Notary Public
State of New Jersey
My Commission Expires August 15, 2021


Notary Public
My commission expires:

-Signature Page to Opn-End Mortgage, Security Agreement and Fixture Filing-

EXHIBIT "A"

LEGAL DESCRIPTION OF PREMISES

All that certain lot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the City of Columbus, County of Franklin, State of Ohio.

Tract I:

Being located in Section 17, Township 12, Range 21, Refugee Lands, more particularly described as follows:

Beginning at a 3/4-inch iron pipe found in the Western right-of-way line of Rand Avenue and at the Southeastern corner of Lot 50 as the same is shown upon the recorded Plat of "Barnett Heights Amended", of record in Plat Book 27, Page 74;

Thence with the Westerly right-of-way line of Rand Avenue, as the same is shown upon the recorded Plat of "Dedication of Rand Avenue and Allendale Drive", of record in Plat Book 32, Page 104, the following Eight (8) courses:

- 1) South 3 deg. 32' 06" West, a distance of 120.35 feet to a found 5/8-inch rebar (bent);
- 2) South 14 deg. 21' 51" West, a distance of 28.66 feet to a set 3/4-inch iron pipe;
- 3) South 3 deg. 53' 06" West, a distance of 404.97 feet to found 5/8-inch rebar at a point of curvature;
- 4) Thence with a curve to the left, having a radius of 230.00 feet, an arc length of 100.42 feet, a central angle of 25 deg. 00' 53" and a chord which bears South 8 deg. 33' 59" East, a chord distance of 99.62 feet to a set 3/4-inch iron pipe at the point of reverse curvature;
- 5) Thence with a curve to the right, having a radius of 170.00 feet, an arc length of 72.74 feet, a central angle of 24 deg. 31' 02" and a chord which bears South 8 deg. 48' 55" East, a chord distance of 72.19 feet to a found 5/8-inch rebar at the point of tangency;
- 6) South 3 deg. 26' 36" West, a distance of 55.00 feet to a found 5/8-inch rebar;
- 7) South 13 deg. 26' 41" West, a distance of 28.79 feet to a found 5/8-inch rebar;
- 8) South 3 deg. 26' 36" West, a distance of 116.81 feet to a found 3/4-inch iron pipe at the intersection of the Westerly right-of-way line of said Rand Avenue and the Northerly right-of-way line of Livingston Avenue;

Thence North 86 deg. 30' 00" West, along the North right-of-way line of Livingston Avenue, a distance of 437.31 feet to a found 3/4-inch pinch top at the Southeast corner of a 0.792 acre tract, conveyed to Katja R. Turner, of record in Instr. No. 200507080134653;

Thence North 3 deg. 17' 48" East, with the Easterly line of said 0.792 acre tract, and the Easterly line of a 1.95 acre tract, conveyed to City of Columbus, Ohio, of record in D.B. 2452, Page 511, and the Easterly line of a 3.405 acre tract, conveyed to City of Columbus, Ohio, of record in Instr. No. 200602100027249, a distance of 821.60 feet to a set 3/4 iron pipe in the Southerly line of a 0.364 acre tract, conveyed to Patricia A. Johnson, of record in O.R. 14527 H09;

Thence South 86 deg. 44' 14" East, with the Southerly line of said 0.364 acre tract, and the Southerly line of a 0.364 acre tract, conveyed to Anena Moore, of record in O.R. 07763 B16, and the Southerly line of a 0.343 acre tract, conveyed to Robert E. & Veronica J. Owens, of record in O.R. 09708 J01, and the Southerly line of a 0.364 acre tract, conveyed to Charlene Peachey & Geraldine Peachey Allen, of record in Instr. No. 200506160116684, and the Southerly line of a 0.130 acre tract, conveyed to Victoria L. Jones, of record in Instr. No. 200001070005865, a distance of 265.03 feet to a found 5/8-inch rebar at the South Easterly corner of said 0.130 acre tract;

Thence North 4 deg. 08' 56" East, with the Easterly line of said 0.130 acre tract, a distance of 99.52 feet to a found 5/8-inch rebar in the Easterly line of said 0.130 acre tract, and at the Southwest corner of said Lot 50 as the same is shown upon the recorded Plat of "Barnett Heights Amended", of record in Plat Book 32, Page 104;

Thence South 86 deg. 15' 31" East, with the Southerly line of said Lot 50, a distance of 150.85 feet, returning to the point of Beginnings, and containing 8.272 acres of land more or less, being subject to all restrictions, easements, and rights-of-way of previous record.

Basis of Bearings:

The centerline of Livingston Avenue was assigned a bearing of South 86 deg. 30' East as shown on the record plat of Berwick Arms, of record in Plat Book 34, Page 79.

Tract II:

Being located in Section 17, Township 12, Range 21, Refugee Lands, more particularly described as follows:

Beginning at a 3/4-inch iron pipe found in the Southerly right-of-way line of Allendale Drive and at the Northwest corner of Lot 12, as the same is shown upon the recorded Plat of "Berwick Arms", of record in Plat Book 34, Page 79;

Thence South 3 deg. 38' 36" West, with the Westerly line of said Lot 12, a distance of 120.00 feet to a found 3/4-inch iron pipe;

Thence South 86 deg. 21' 24" East, with the Southerly line of said Lot 12 and the Southerly line of Lot 13 and Lot 14, as the same is shown upon the recorded plat of "Berwick Arms", of record in Plat Book 34, Page 79, a distance of 167.26 feet to a found 3/4-inch iron pipe at the Southwesterly corner of Reserve "D" a 0.396 acre tract, (by survey), conveyed to Colonial Village Berwick, LLC, of record in Instr. No. 200605020083518;

Thence South 34 deg. 38' 34" East, with the Southerly line of said 0.396 acre tract, a distance of 117.21 feet to a set 3/4 iron pipe at the Northwesterly corner of Lot 15, as the same is shown upon the recorded Plat of "Berwick Arms", of record in Plat Book 34;

Thence South 3 deg. 26' 36" West, with the Westerly line of Lots 15 through 23, inclusive, as the same is shown upon the recorded Plat of "Berwick Arms", of record in Plat Book 34, Page 79, a distance of 537.65 feet to a found 3/4-inch pinch top at the Southwest corner of said Lot 23, and in the Northerly right-of-way line of Livingston Avenue;

Thence North 86 deg. 30' 00" West, along the North right-of-way line of Livingston Avenue, a distance of 525.55 feet to a found 3/4-inch iron pipe at the Intersection of the North right-of-way of Livingston Avenue and the East right-of-way line of Rand Avenue;

Thence with the Easterly right-of-way line of Rand Avenue, as the same is shown upon the recorded Plat of "Dedication of Rand Avenue and Allendale Drive", of record in Plat Book 32, Page 104, the following Six (6)

courses:

- 1) North 3 deg. 26' 36" East, a distance of 116.88 feet to a found 5/8-inch rebar;
- 2) North 6 deg. 33' 29" West, a distance of 28.79 feet to a found 5/8-inch rebar;
- 3) North 3 deg. 26' 36" East, a distance of 55.00 feet to a set 3/4-inch iron pipe at a point of curvature;
- 4) Thence with a curve to the left, having a radius of 230.00 feet, an arc length of 98.42 feet, a central angle of 24 deg. 31' 02" and a chord which bears North 8 deg. 48' 55" West, a chord distance of 97.67 feet to a found 5/8-inch rebar iron pin at a point of reverse curvature;
- 5) Thence with a curve to the right, having a radius of 170.00 feet, an arc length of 73.86 feet, a central angle of 24 deg. 53' 37" and a chord which bears North 8 deg. 37' 37" West, a chord distance of 73.28 feet to a set 3/4-inch iron pipe at the point of tangency;
- 6) North 3 deg. 53' 06" East, a distance of 373.82 feet to a found 5/8-inch rebar at a point of curvature;

Thence with a curve to the right, having a radius of 10.00 feet, an arc length of 15.67 feet, a central angle of 89 deg. 45' 30" and a chord which bears North 48 deg. 45' 51" East, a chord distance of 14.11 feet, to a found 5/8-inch rebar, at the point of tangency and being in the Southerly right-of-way of said Allendale Drive;

Thence South 86 deg. 21' 24" East, along the Southerly right-of-way line of Allendale Drive, a distance of 314.56 feet, returning to the point of Beginnings, and containing 8.758 acres of land more or less, being subject to all restrictions, easements, and right-of-way of previous record.

Basis of Bearings:

The centerline of Livingston Avenue was assigned a bearing of South 86 deg. 30' East as shown on the record Plat of Berwick Arms, of record in Plat Book 34, Page 79.

Tract III:

Being located in Section 17, Township 12, Range 21, Refugee Lands, more particularly described as follows:

Beginning at a 3/4-inch iron pipe found in the Northerly right-of-way line of Allendale Drive and at the Southwest corner of Lot 11, as the same is shown upon the recorded Plat of "Berwick Arms", of record in Plat Book 34, Page 79;

Thence North 86 deg. 21' 24" West, with the Northerly right-of-way line of Allendale Drive as the same is shown upon the recorded Plat of "Dedication of Rand Avenue and Allendale Drive", of record in Plat Book 32, Page 104, a distance of 259.05 feet to a found 5/8-inch rebar at a point of curvature;

Thence with a curve to the right, having a radius of 10.00 feet, an arc length of 15.69 feet, a central angle of 89 deg. 53' 30" and a chord which bears North 41 deg. 24' 39" West, a chord distance of 14.13 feet to a found 5/8-inch rebar, at the point of tangency and being in the Easterly right-of-way of said Rand Avenue, as the same is shown upon the recorded Plat of "Dedication of Rand Avenue and Allendale Drive", of record in Plat Book 32, Page 104;

Thence North 3 deg. 32' 06" East, along the Easterly right-of-way line of said Rand Avenue, a distance of 110.31 feet to a found 3/4-inch iron pipe at the Southwest corner of Lot 49, as the same is shown upon the recorded Plat of "Barnett Heights Amended", of record in Plat Book 27, Page 74;

Thence South 86 deg. 15' 31" East, with the Southerly line of said Lot 49, and the Southerly line of Lot 42, as the same is shown upon the recorded Plat of "Barnett Heights Amended", of record in Plat Book 27, Page 74, a distance of 269.26 feet to a found 3/4-inch iron pipe at the Northwest corner of said Lot 11;

Thence South 3 deg. 38' 36" West, with the Westerly line of said Lot 11, a distance of 119.83 feet, returning to the point of Beginning, and containing 0.920 acres of land, more or less, being subject to all restrictions, easements, and right-of-way of previous records.

Basis of Bearings:

The centerline of Livingston Avenue was assigned a bearing of South 86 deg. 30' East as shown on the record plat of Berwick Arms, of record in Plat Book 34, Page 79.

Tract IV:

Being located in Section 17, Township 12, Range 21, Refugee Lands, and being all of Reserve "D", as the same is shown upon the recorded Plat of "Berwick Arms", of record in Plat Book 34, Page 79, more particularly described as follows:

Beginning at a 3/4-inch iron pipe found at the Southeast corner of Lot 14, as the same is shown upon the recorded Plat of "Berwick Arms", of record in Plat Book 34, Page 79;

Thence North 33 deg. 29' 10" East, with the Easterly line of said Lot 14, a distance of 119.46 feet to a set 3/4-inch iron pipe, at the Northeast corner of said Lot 14 and in the Southerly right-of-way line of Allendale Drive, as the same is shown upon the recorded Plat of "Dedication of Rand Avenue and Allendale Drive", of record in Plat Book 32, Page 104;

Thence with a curve to the right, having a radius of 125.00 feet, an arc length of 48.10 feet, a central angle of 22 deg. 02' 54" and a chord which bears South 45 deg. 40' 01" East, a chord distance of 47.81 feet to set 3/4-inch iron pipe at a point of tangency;

Thence South 34 deg. 38' 34" East, along the Southerly right-of-way line of Allendale Drive, a distance of 113.06 feet to a set 3/4-inch iron pipe at a point of curvature;

Thence with a curve to the right, having a radius of 125.00 feet, an arc length of 9.08 feet, a central angle of 4 deg. 09' 46", and a chord which bears South 32 deg. 33' 41" East, a chord distance of 9.08 feet, to a set 3/4-inch iron pipe, at the Northeast corner of Lot 15, as the same is shown upon the recorded Plat of "Berwick Arms", of record in Plat Book 34, Page 79;

Thence South 58 deg. 52' 15" West, with the Northerly line of said Lot 15, a distance of 119.90 feet, to a set 3/4-inch iron pipe, at the Northwest corner of said Lot 15 and in the Easterly line of an 8.758 acre tract, conveyed to Colonial Village Berwick, LLC, of record in Instr. No. 200605020083518.

Thence North 34 deg. 38' 34" West, with the Easterly line of said 8.758 acre tract, a distance of 117.21 feet, returning to the point of Beginning, and containing 0.396 acres of land, more or less, being subject to all restrictions, easements, and rights-of-way of previous record.

Basis of Bearings:

The centerline of Livingston Avenue was assigned a bearing of South 86 deg. 30' East as shown on the record Plat of Berwick Arms, of record in Plat Book 34, Page 79.

Tract V (Parcel I):

Being located in Section 17, Township 12, Range 21, Refugee Lands, and being all of Lot 11, as the same is shown upon the recorded Plat of "Berwick Arms", of record in Plat Book 34, Page 79, more particularly described as follows:

Beginning at a 3/4-inch iron pipe found in the Northerly right-of-way line of Allendale Drive as the same is shown upon the recorded Plat of "Dedication of Rand Avenue and Allendale Drive", of record in Plat Book 32, Page 104 and at the Southwest corner of said Lot 11;

Thence North 3 deg. 38' 36" East, with the Westerly line of said Lot 11, a distance of 119.83 feet to a found 3/4-inch iron pipe in the Southerly line of Lot 42, as the same is shown upon the recorded Plat of "Barnett Heights Amended", of record in Plat Book 27, Page 74;

Thence South 86 deg. 15' 31" East, with the Southerly line of said Lot 42, a distance of 65.00 feet to a found 3/4-inch pinch top at the Southeast corner of said Lot 42 and being in the Westerly right-of-way line of Olney Drive;

Thence South 3 deg. 38' 36" West, with the Westerly right-of-way line of Olney Drive, a distance of 109.71 feet to a set 3/4-inch iron pipe at a point of curvature;

Thence with a curve to the right, having a radius of 10.00 feet, an arc length of 15.71 feet, a central angle of 90 deg. 00' 00" and a chord which bears South 48 deg. 38' 36" West, a chord distance of 14.14 feet to a set 3/4-inch iron pipe at a point of tangency in the Northerly right-of-way line of said Allendale Drive;

Thence North 86 deg. 21' 24" West, with the said Northerly right-of-way line of Allendale Drive, a distance of 55.00 feet, returning to the point of Beginning, and containing 0.178 acres of land, more or less, being subject to all restrictions, easements, and right-of-way, of previous records.

Basis of Bearings:

The centerline of Livingston Avenue was assigned a bearing of South 86 deg. 30' East as shown on the record Plat of Berwick Arms, of record in Plat Book 34, Page 79.

Tract V (Parcel II):

Being located in Section 17, Township 12, Range 21, Refugee Lands, and being all of Lots 1 through 10, inclusive, together with Reserve "B" and Reserve "C", as the same is shown upon the recorded Plat of "Berwick Arms", of record in Plat Book 34, Page 79, more particularly described as follows:

Beginning at a 3/4-inch pinch top found in the Easterly right-of-way line of Olney Drive and at the Southwesterly corner of Lot 41, as the same is shown upon the recorded Plat of "Barnett Heights Amended", of record in Plat Book 27, Page 74;

Thence South 86 deg. 15' 31" East, with the Southerly line of said Lot 41, and the Southerly line of a 0.616 acre tract (by survey), conveyed to Colonial Village Berwick, LLC, of record in Instr. No. 200605020083518, a distance of 323.47 feet to a set 3/4 iron pipe, in the Westerly right-of-way line of New York Central R.R.;

Thence South 34 deg. 36' 26" East, with the Westerly right-of-way line of New York Central R.R., a distance of 284.14 feet to a found 3/4 iron pipe in the Westerly right-of-way line of New York Central R.R. and at the Northwest corner of a 2.868 acre tract (by survey), conveyed to Colonial Village Berwick, LLC, of record in Instr.

No. 200701110006858;

Thence South 3 deg. 26' 36" West, with the Westerly line of said 2.868 acre tract (by survey), a distance of 694.80 feet to a set 3/4 iron pipe, at the Southwest corner of the said 2.868 acre tract, and being in the Northerly right-of-way line of Livingston Avenue;

Thence North 86 deg. 30' 00" West, along the North right-of-way line of Livingston Avenue, a distance of 125.02 feet to a set 3/4 iron pipe at a point of curvature;

Thence with a curve to the right, having a radius of 20.00 feet, an arc length of 31.40 feet, a central angle of 89 deg. 56' 36" and a chord which bears North 41 deg. 31' 42" West, a chord distance of 28.27 feet to a set 3/4 iron pipe at a point of tangency in the Easterly right-of-way line of Brookway Road;

Thence with the Easterly right-of-way line of Brookway Road the following Six (6) courses:

- 1) North 3 deg. 26' 36" East, a distance of 516.11 feet, to a found 5/8-inch rebar at a point of curvature;
- 2) Thence with a curve to the left, having a radius of 175.00 feet, an arc length of 116.33 feet, a central angle of 38 deg. 05' 10" and a chord which bears North 15 deg. 35' 59" West, a chord distance of 114.20 feet, to a found 5/8-inch rebar at a point of tangency;
- 3) North 34 deg. 38' 34" West, a distance of 113.06 feet, to found 5/8-inch rebar at a point of curvature;
- 4) Thence with a curve to the left, having a radius of 175.00 feet, an arc length of 157.95 feet, a central angle of 51 deg. 42' 50" and a chord which bears North 60 deg. 29' 59" West, a chord distance of 152.64 feet, to a set 3/4 iron pipe at a point of tangency;
- 5) North 86 deg. 21' 24" West, a distance of 99.89 feet, to a set 3/4 iron pipe at a point of curvature;
- 6) Thence with a curve to the right, having a radius of 10.00 feet, an arc length of 15.71 feet, a central angle of 90 deg. 00' 00" and a chord which bears North 41 deg. 21' 24" West, a chord distance of 14.14 feet, to a set 3/4 iron pipe at a point of tangency in the Easterly right-of-way line of Olney Drive;

Thence North 3 deg. 38' 36" East, with the said Easterly right-of-way line of Olney Drive, a distance of 109.63 feet, returning to the point of Beginning, and containing 3.978 acres of land, more or less, being subject to all restrictions, easements, and rights-of-ways of previous record.

Basis of Bearings:

The centerline of Livingston Avenue was assigned a bearing of South 86 deg. 30' East as shown on the record Plat of Berwick Arms, of record in Plat Book 34, Page 79.

Tract VI (Parcel I):

Being located in Section 17, Township 12, Range 21, Refugee Lands, and being all of Lots 12 through 14, inclusive, as the same is shown upon the recorded Plat of "Berwick Arms", of record in Plat Book 34, Page 79, more particularly described as follows:

Beginning at a 3/4 iron pipe found in the Southerly right-of-way line of Allendale Drive and at the Northwest corner of said Lot 12;

Thence South 86 deg. 21' 24" East, with the said Southerly right-of-way line of Allendale Drive, a distance of

164.83 feet to a found 5/8 rebar at a point of curvature;

Thence with a curve to the right, having a radius of 125.00 feet, an arc length of 64.72 feet, a central angle of 29 deg. 39' 57" and a chord which bears South 71 deg. 31' 26" East, a chord distance of 64.00 feet, a set 3/4-inch iron pipe at the Northwest corner of a 0.396 acre tract, conveyed to Colonial Village Berwick, LLC, of record in Instr. No. 200605020083518;

Thence South 33 deg. 29' 10" West, with the Westerly line of said 0.396 acre tract, a distance of 119.46 feet, to a found 3/4 iron pipe, in the Easterly line of a 8.758 acre tract, conveyed to Colonial Village Berwick, LLC, of record in Instr. No. 200605020083518;

Thence North 86 deg. 21' 24" West, along the Northerly line of said 8.758 acre tract, a distance of 167.26 feet to a found 3/4 iron pipe at the Southwest corner of said Lot 12;

Thence North 3 deg. 38' 36" East, along the Westerly line of said Lot 12, a distance of 120.00 feet, returning to the point of Beginning, and containing 0.546 acres of land, more or less, being subject to all restrictions, easements, and rights-of-ways of previous record.

Basis of Bearings:

The centerline of Livingston Avenue was assigned a bearing of South 86 deg. 30' East as shown on the record Plat of Berwick Arms, of record in Plat Book 34, Page 79.

Tract VI (Parcel II):

Being located in Section 17, Township 12, Range 21, Refugee Lands, and being all of Lots 15 through 23, inclusive, as the same is shown upon the recorded Plat of "Berwick Arms", of record in Plat Book 34, Page 79, more particularly described as follows:

Beginning at a 3/4 iron pipe set in the Westerly right-of-way line of Brookway Road and at the Northeast corner of said Lot 15, and at the Southeasterly corner of a 0.396 acre tract, conveyed to Colonial Village Berwick, LLC, of record in Instr. No. 200605020083518;

Thence with the Westerly right-of-way line of said Brookway Road, the following Three (3) courses;

1) Thence with a curve to the right, having a radius of 125.00 feet, an arc length of 74.01 feet, a central angle of 33 deg. 55' 24" and a chord which bears South 13 deg. 31' 06" East, a chord distance of 72.93 feet to a found 5/8-inch rebar at a point of tangency;

2) South 3 deg. 26' 36" West, a distance of 516.03 feet to a set 3/4-inch iron pipe at a point of curvature;

3) Thence with a curve to the right, having a radius of 20.00 feet, an arc length of 31.44 feet, a central angle of 90 deg. 03' 24" and a chord which bears South 48 deg. 28' 18" West, a chord distance of 28.30 feet to set 3/4-inch iron pipe at a point of tangency, in the Northerly right-of-way line of Livingston Avenue;

Thence North 86 deg. 30' 00" West, along the North right-of-way line of Livingston Avenue, a distance of 99.98 feet to a found 3/4-inch pinch top at the Southeast corner of an 8.758 acre tract, conveyed to Colonial Village Berwick, LLC, of record in Instr. No. 200605020083518;

Thence North 3 deg. 26' 36" East, with the Easterly line of said 8.758 acre tract, a distance of 537.65 feet to a set 3/4-inch iron pipe, at the Northwest corner of said Lot 15 and at the Southwest corner of said 0.396 acre tract;

Thence North 58 deg. 52' 15" East, with the Southerly line of said 0.396 acre tract, a distance of 119.90 feet, returning to the point of Beginning, and containing 1.579 acres of land more or less, being subject to all restrictions, easements, and rights-of-ways of previous record.

Basis of Bearings:

The centerline of Livingston Avenue was assigned a bearing of South 86 deg. 30' East as shown on the record Plat of Berwick Arms, of record in Plat Book 34, Page 79.

Tract VII:

Being located in Section 17, Township 12, Range 21, Refugee Lands, and being all of Reserve "A", as the same is shown upon the recorded Plat of "Berwick Arms", of record in Plat Book 34, Page 79, more particularly described as follows:

Beginning at a 3/4-inch iron pipe set, at the Southeasterly corner of Lot 41, as the same is shown upon the recorded Plat of "Barnett Heights Amended", of record in Plat Book 27, Page 74, and in the Northerly line of a 3.978 acre tract, conveyed to Colonial Village Berwick, LLC, of record in Instr. No. 200605020083518;

Thence North 16 deg. 33' 39" West, with the Easterly line of Lots 36 through 41, inclusive, as the same is shown upon the recorded Plat of "Barnett Heights Amended", of record in Plat Book 27, Page 74, a distance of 369.66 feet to a found 3/4 iron pipe at an angle point in said Lot 36;

Thence South 83 deg. 58' 10" East, with the Easterly line of said Lot 36, a distance of 4.49 feet to a found 3/4 iron pipe in the Westerly right-of-way line of New York Central R.R.;

Thence South 34 deg. 36' 26" East, with the said Westerly right-of-way line of New York Central R.R., a distance of 442.08 feet, to a 3/4-inch iron pipe set at the Northeast corner of said 3.978 acre tract;

Thence North 86 deg. 15' 31" West, with the Northerly line of the said 3.978 acre tract, a distance of 150.44 feet, returning to the point of Beginning, and containing 0.616 acres of land, more or less, being subject to all restrictions, easements, and rights-of-way of previous record.

Basis of Bearings:

The centerline of Livingston Avenue was assigned a bearing of South 86 deg. 30' East as shown on the record Plat of Berwick Arms, of record in Plat Book 34, Page 79.

EXHIBIT "B"

LIST OF ADDRESSES AND PARCEL ID NUMBERS

A. ADDRESSES:

1300 Brookway Road, Columbus, OH 43227 and 1294 Brookway Road, Columbus, OH 43227 and 1288 Brookway Road, Columbus, OH 43227 and 1280 Brookway Road, Columbus, OH 43227 and 1272 Brookway Road, Columbus, OH 43227 and 1264 Brookway Road, Columbus, OH 43227 and 1256 Brookway Road, Columbus, OH 43227 and 1248 Brookway Road, Columbus, OH 43227 and 1240 Brookway Road, Columbus, OH 43227 and 1180 Olney Drive, Columbus, OH 43227 and 1179 Olney Drive, Columbus, OH 43227 and 3639 Allendale Drive, Columbus, OH 43227 and 3651 Allendale Drive, Columbus, OH 43227 and 3663 Allendale Drive, Columbus, OH 43227 and 1239 Brookway Road, Columbus, OH 43227 and 1247 Brookway Road, Columbus, OH 43227 and 1255 Brookway Road, Columbus, OH 43227 and 1263 Brookway Road, Columbus, OH 43227 and 1271 Brookway Road, Columbus, OH 43227 and 1279 Brookway Road, Columbus, OH 43227 and 1287 Brookway Road, Columbus, OH 43227 and 1295 Brookway Road, Columbus, OH 43227 and 1301 Brookway Road, Columbus, OH 43227 and 3668 Allendale Drive, Columbus, OH 43227 and 3666 Allendale Drive, Columbus, OH 43227 and 1228 Brookway Road, Columbus, OH 43227 and 1225 Brookway Road, Columbus, OH 43227 and 3727 Briggs Road, Columbus, OH 43228 and 1171 Rand Avenue, Columbus, OH 43227 and 3532 Rand Circle, Columbus, OH 43227 and 3557 Rand Circle, Columbus, OH 43227 and 3514 Rand Square, Columbus, OH 43227 and 1256 Rand Avenue, Columbus, OH 43227 and 1223 Berwick Arms Place, Columbus, OH 43227.

B. PARCEL ID NUMBERS:

Parcel:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34

Tax Identification Numbers:

010-134510
010-134511
010-134512
010-134513
010-134514
010-134515
010-134516
010-134517
010-134518
010-134519
010-134520
010-134521
010-134522
010-134523
010-134524
010-134525
010-134526
010-134527
010-134528
010-134529
010-134530
010-134531
010-134532
010-134533
010-134534
010-134535
010-134536
010-134570
010-137571
010-137572
010-137573
010-137574
010-137576
010-137577

EXHIBIT 4

PLEDGE AND SECURITY AGREEMENT

This PLEDGE AND SECURITY AGREEMENT (this "**Agreement**") is made as of August __, 2020 by APEX COLONIAL HOLDINGS LLC, a Delaware limited liability company ("**Grantor**"), to and in favor of EF SBC 2015-2 LLC, a Delaware limited liability company (hereinafter, together with its successors and assigns, referred to as "**Lender**").

RECITALS:

A. Grantor is the holder of one hundred percent (100%) of the membership interests in APEX COLONIAL OH LLC, a Delaware limited liability company ("**Borrower**").

B. Lender agreed, subject to the terms and conditions contained therein, to make a loan ("**Loan**") to Borrower as evidenced by that certain Promissory Note of even date herewith made by Borrower to the order of Lender in the maximum principal amount of Fifteen Million Five Hundred Thousand and No/100 Dollars (\$15,500,000.00) (the note and any and all renewals, amendments, modifications, increases and extensions thereof are hereinafter collectively called the "**Note**"). All capitalized terms herein shall have the meanings ascribed to them in the Note unless otherwise defined in this Agreement.

C. In connection with the Loan, Borrower has executed that certain Open-End, Security Agreement and Fixture Filing of even date herewith (as amended from time to time, hereinafter referred to as the "**Mortgage**").

D. As a condition to Lender making the Loan, Lender has required that Grantor execute and deliver this Agreement to Lender to secure the prompt and complete performance of all of the obligations and payment of all of the indebtedness under the Loan Documents (all such obligations and indebtedness are hereinafter referred to collectively as the "**Liabilities**"). Grantor and Borrower will directly benefit from the Loan.

AGREEMENT:

NOW, THEREFORE, in consideration of the covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Defined Terms.** As used in this Agreement, the following terms shall have the following meanings:

"**Code**" shall mean the Uniform Commercial Code as the same may from time to time be in effect in the State of New York and/or in such other jurisdiction applicable hereunder.

"**Formation Agreement**" shall mean the Certificate of Formation, Articles of Formation, Articles of Organization, Articles of Incorporation and Operating Agreement, or equivalent documents, of Borrower, as such documents may be hereafter amended from time to time in accordance with the terms of this Agreement.

"**Proceeds**" shall mean "proceeds," as such term is defined in the Code and shall include, but not be limited to, (i) any and all payments (in any form whatsoever) made or due and payable to Grantor from time to time in connection with any condemnation, seizure or forfeiture of all or any part of the Pledged Collateral (hereinafter defined) by any governmental body, authority, bureau or agency (or any person acting under color of governmental authority), (ii) any and all amounts paid or payable to Grantor for or in connection with any sale or other disposition of Grantor's interests in Borrower and (iii) any and all other amounts from time to time paid or payable under or in connection with any of the Pledged Collateral.

2. **Grant of Security Interest.** As security for the prompt and complete payment and performance when due of the Liabilities, Grantor hereby grants to Lender a security interest in and pledges to Lender all of the following (all of which being herein collectively called the "**Pledged Collateral**"):

(a) one hundred percent (100%) of the membership interests of the Borrower owned by Grantor (directly or indirectly and now or hereafter obtained), together with all instruments and general intangibles related thereto, including without limitation the Formation Agreement, and all monies, income, proceeds and benefits attributable or accruing to said property (together with any Proceeds, "**Distributions**"), including, but not limited to, all equity rights, options, rights to subscribe, dividends, liquidating dividends or distributions, distributions or dividends paid in equity, new securities or other properties or benefits to which Grantor is or may hereafter become entitled to receive on account of said property; and

(b) to the extent not otherwise included, all Proceeds and products of any of the foregoing.

3. **Delivery of Pledged Collateral.** All instruments representing or evidencing any of the Pledged Collateral, promptly upon Grantor gaining any rights therein, shall be delivered to and held by or on behalf of Lender pursuant hereto in suitable form for transfer by delivery, or accompanied by duly executed instruments of transfer or Agreement in blank, all in form and substance satisfactory to Lender. After the occurrence and during the continuation of an Event of Default, Lender shall have the right at any time to exchange instruments representing or evidencing any Pledged Collateral in its possession for instruments of smaller or larger denominations.

4. **Representations and Warranties.** Grantor represents and warrants that:

(a) It is the sole owner of the Pledged Collateral, free and clear of any and all liens and claims whatsoever except for the security interest granted to Lender pursuant to this Agreement.

(b) No security agreement, financing statement, assignment, or equivalent lien instrument covering all or any part of the Pledged Collateral is on file or of record in any public office or at the records of Borrower, except financing statements with respect to the Pledged Collateral filed by Lender pursuant to this Agreement.

(c) To Grantor's knowledge, upon the filing of all appropriate financing statements under the applicable Uniform Commercial Code, all steps necessary to create and perfect the security interest created by this Agreement as a first lien on and first perfected security interest in the Pledged Collateral in favor of Lender, prior to all other liens, security interests and other claims of any sort whatsoever will have been taken. This Agreement and the security interest created hereby are enforceable as such against creditors of and purchasers from Grantor.

(d) Grantor has not changed its name.

(e) Grantor has all power, statutory and otherwise, to execute and deliver this Agreement, to perform the obligations hereunder and to subject the Pledged Collateral to the security interest created hereby, all of which has been duly authorized by all necessary action.

(f) Except as required under the Loan Documents and effected prior to the date hereof, no amendments or supplements have been made to the Formation Agreement since it was originally entered into, such Formation Agreement remains in effect, and no party to the Formation Agreement is presently in default thereunder.

(g) Grantor has the right to transfer all or any part of the Pledged Collateral free of any lien or encumbrance.

(h) No authorization, approval, or other action by, and no notice to or filing with, any governmental authority or regulatory body is required for (i) Grantor's granting of a security interest in the Pledged Collateral pursuant to this Agreement, (ii) the execution, delivery or performance of this Agreement by Grantor or (iii) the exercise by Lender of the rights or remedies with respect to the Pledged Collateral granted in this Agreement (except as may be required in connection with such disposition by securities laws).

(i) The addresses for Grantor is as set forth on the signature page hereof. Grantor is an individual and has full power and authority to execute, deliver and perform this Agreement and all Loan Documents to which the Grantor is a party, and such execution, delivery and performance have been duly authorized by all requisite action on the part of the Grantor.

(j) Upon the transfer of any of the Pledged Collateral to any party pursuant to Section 11 below, Borrower shall continue in existence and the Formation Agreement provides for such continuation.

(k) **Pledged Collateral**

(i) The Pledged Collateral has been duly authorized and validly issued and is fully paid and nonassessable under the laws of the jurisdiction of formation of the issuer thereof.

(ii) Grantor has not sold, granted any option with respect to, assigned, transferred or otherwise disposed of any of its rights or interest in or to the Pledged Collateral, except as set forth in the Formation Documents.

(l) The value of the consideration received and to be received by Grantor as a result of Borrower and Lender entering into the Loan Documents and Grantor executing and delivering this Agreement is reasonably worth at least as much as the liability and obligation of Grantor hereunder, and such liability and obligation and Borrower's entering into the Loan Documents have benefited and may reasonably be expected to benefit Grantor directly and indirectly.

5. **Covenants.** Grantor covenants and agrees that from and after the date of this Agreement until the Liabilities are fully satisfied (exclusive of provisions that survive full payment):

(a) **Further Documentation Pledge of Instruments.** At any time upon the written request of Lender and at the sole expense of the Grantor, Grantor will promptly execute and deliver any and all such further instruments and documents and take such further actions as Lender may reasonably deem necessary or desirable to obtain the full benefits of this Agreement and of the rights and powers granted herein, including without limitation the execution and filing of any financing or continuation statements under the applicable Code with respect to the security interest granted hereby and, if otherwise required hereunder, transferring Pledged Collateral to the possession of Lender (if a security interest in such Pledged Collateral can be perfected by possession). Grantor hereby authorizes Lender to file any such financing or continuation statements (and amendments thereto) to the extent permitted by applicable law. If any amount payable in connection with any of the Pledged Collateral shall be or become evidenced by any promissory note or other instrument (other than an instrument which constitutes chattel paper under the Code), such note or instrument shall be immediately pledged hereunder and a security interest therein granted to Lender and shall be duly endorsed in a manner satisfactory to Lender and delivered to Lender. If at any time Grantor's right or interest in any of the Pledged Collateral becomes an interest in real property, Grantor shall immediately execute, acknowledge and deliver to Lender such further documents as Lender deems necessary or advisable to create a first priority perfected mortgage lien in favor of Lender in such real property interest.

(b) **Priority of Liens.** Grantor will defend the right, title and interest hereunder of Lender as a first priority security interest in the Pledged Collateral against the claims and demands of all persons whomsoever.

(c) Notices. Grantor will advise Lender promptly, in reasonable detail, (i) of any lien, security interest, encumbrance or claim made or asserted against any of the Pledged Collateral, and (ii) of any distribution of cash or other property by Borrower during the continuance of an Event of Default, whether in complete or partial liquidation or otherwise, and of any other change in the composition of the Pledged Collateral, Grantor or Borrower.

(d) Continuous Perfection. Grantor will not change its name in any manner which might make any financing or continuation statement filed hereunder seriously misleading within the meaning of Section 9-506 of the Code (or any other then-applicable provision of the Code) unless the Grantor shall have given Lender at least thirty (30) days' prior written notice thereof and shall have taken all action (or made arrangements to take such action substantially simultaneously with such change if it is impossible to take such action in advance) necessary or reasonably requested by Lender to amend such financing statement or continuation statement so that it is not seriously misleading. Grantor will not sign or authorize the signing on its own behalf of any financing statement naming Grantor as debtor covering all or any portion of the Pledged Collateral, except financing statements naming Lender as secured party.

(e) Location. Grantor will not change its residence or jurisdiction of formation unless the Grantor has previously notified Lender thereof and taken such action as is necessary or reasonably requested by Lender to cause the security interest of Lender in the Pledged Collateral to continue to be perfected.

(f) Transfer of Assets. Grantor will not directly or indirectly sell, pledge, mortgage, assign, transfer, or otherwise dispose of or create or suffer to be created any lien, security interest, or encumbrance on any of the Pledged Collateral or the assets of Borrower, except for the liens on Borrower's assets created by or permitted by the Loan Documents.

(g) Performance of Obligations. Grantor will perform all of its obligations under the Formation Agreement prior to the time that any interest or penalty would attach against Grantor or any of the Pledged Collateral as a result of Grantor's failure to perform any of such obligations, and Grantor, to the extent it is in control of Borrower, will do all things necessary to maintain Borrower as a limited liability company under the laws of the jurisdiction of organization and to maintain Grantor's interest in Borrower in full force and effect without diminution.

(h) Formation Agreement. Grantor will not (x) suffer or permit any amendment or modification of the Formation Agreement without the prior written consent of Lender, (y) withdraw as a member or manager of Borrower, or (z) waive, release, or compromise any rights or claims Grantor may have against any other party which arise under the Formation Agreement. Grantor will not vote under the Formation Agreement to cause Borrower to dissolve, liquidate, merge or consolidate with any other entity or take any other action under the Formation Agreement that would adversely affect the security interest created by this Agreement, including without limitation the value or priority thereof. Grantor will not permit, suffer or otherwise consent to the modification or redemption of existing interests in Borrower or the issuance of any new or additional interests in Borrower or options or other agreements granting any right to receive interests in Borrower.

(i) Stay or Extension Laws. Grantor will not at any time claim, take, insist upon or invoke the benefit or advantage of or from any law now or hereafter in force providing for the valuation or appraisal of the Pledged Collateral prior to any sale thereof to be made pursuant to the provisions hereof or pursuant to the decree, judgment, or order of any court of competent jurisdiction. Additionally, Grantor will not, after any such sale, claim or exercise any right under any statute now or hereafter made or enacted to redeem the property so sold or any part thereof, and Grantor hereby expressly waives, on behalf of itself and each and every person claiming by, through and/or under Grantor, all benefit and advantage of any such law, and covenants that Grantor will not invoke or utilize any such law or otherwise delay or impede the execution

of any power, right or remedy hereby granted to Lender, but will authorize and permit the execution of every such power, right or remedy as though no such law had been made or enacted.

(j) Delivery of Instruments. Grantor agrees (i) immediately to deliver to Lender, or Lender's designee, all instruments or other documents evidencing any of the Pledged Collateral which may come into such Grantor's possession and (ii) to execute and deliver a notice of Lender's security interest in the Pledged Collateral (which notice shall be satisfactory to Lender in form and substance and which may request acknowledgment from the addressee) to any third party which either has possession of the Pledged Collateral or any instrument evidencing any of the Pledged Collateral, or otherwise has the ability under applicable law or the terms of any agreement to record transfers or transfer ownership of any of the Pledged Collateral (whether at the direction of the Grantor or otherwise). Grantor hereby appoints Lender as Grantor's attorney-in-fact with authority at any time or times to take any of the foregoing actions on behalf of Grantor. Grantor agrees that this Agreement or a photocopy of this Agreement shall be sufficient as a financing statement.

(k) Borrower's Records. Grantor, shall cause Borrower to make a notation on the records of Borrower indicating the security interest granted hereby.

(l) Uncertificated Securities. If at any time the Pledged Collateral constitutes a "security" as defined in Article 8 of the Code, Grantor shall, or shall permit Lender to, promptly take all action necessary or appropriate to cause Lender to have sole and exclusive "control" over the Pledged Collateral, as such term is defined in Article 9 of the Code.

6. **Grantor's Powers.**

(a) So long as an Event of Default shall not then exist, the Grantor shall be the sole party entitled (i) to exercise any and all voting and other consensual rights and powers, and (ii) to receive and retain, free and clear of any and all liens, claims and security interests granted to Lender pursuant to this Agreement and/or the Loan Documents, and all Distributions arising from or relating to the Pledged Collateral; provided, however, that Grantor shall not accept any Distributions (and shall deliver to Lender any such Distributions if the Grantor accepted any Distributions that would be in contravention of the provisions of, or constitute an Event of Default under, this Agreement or any of the other Loan Documents), exercise such rights or powers, or consent to any action of Borrower that would be in contravention of the provisions of, or constitute an Event of Default under, this Agreement or any of the other Loan Documents.

(b) Upon the occurrence and during the continuation of an Event of Default, and the receipt by Borrower and Grantor of written notice from Lender stating its intention to exercise its rights and remedies under Section 11 hereof and providing the details of such Event of Default, all rights of Grantor provided in Section 6(a) hereof shall cease, and all voting rights and powers and rights to distributions included in the Pledged Collateral or otherwise described in Section 6(a) shall become vested in Lender, and Lender shall have the sole and exclusive right and authority to exercise such voting rights and powers thereafter. Grantor shall execute such documents and instruments that Lender may request in order to permit Lender to exercise the voting and other rights that it may be entitled to exercise pursuant to this Section 6(b) or the Loan Documents or by law and/or otherwise, including but not limited to statements that the Grantor no longer has the right to act as a member or otherwise relating to such change as Lender may request. Grantor agrees that Borrower and any member in Borrower may rely conclusively upon any notice from Lender that Lender has the right and authority to exercise all rights and powers of the Grantor under the Formation Agreement. Grantor irrevocably waives any claim or cause of action against Borrower or any member in Borrower who deals directly with Lender following receipt of such notice from Lender with respect to such Lender instructions.

7. **Lender's Appointment as Attorney-in-Fact.**

(a) Grantor hereby irrevocably constitutes and appoints Lender and each officer or agent of Lender with full power of substitution as their true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of said Grantor and in the name of said Grantor or in such attorney-in-fact's own name, from time to time in the discretion of each such attorney-in-fact during the continuance of an Event of Default, for the purpose of carrying out the terms of this Agreement, to take any and all appropriate action and to execute any and all documents and instruments which may be necessary or desirable to accomplish the purposes of this Agreement and, without limiting the generality of the foregoing, hereby gives each such attorney-in-fact the power and right during the continuance of an Event of Default, without notice to or assent by said Grantor to do the following on behalf of the Grantor:

(i) to collect and otherwise take possession of and title to any and all distributions of cash or other property due or distributable at any time after the date of default to the Grantor as a member from Borrower, whether in complete or partial liquidation or otherwise, to prosecute or defend any action or proceeding in any court of law or equity, to convert any non-cash distributions to cash, and to apply any such cash distributions, interest or proceeds of conversion in the manner specified in Section 11(c) of this Agreement;

(ii) to ask, demand, collect, receive and give acceptances and receipts for any and all moneys due and to become due under any Pledged Collateral and, in the name of the Grantor or such attorney-in-fact's own name or otherwise, to take possession of and endorse and collect any checks, drafts, notes, acceptances or other instruments for the payment of moneys due under any Pledged Collateral, and to file any claim or to take any other action or proceeding in any court of law or equity or otherwise deemed appropriate by such attorney-in-fact for the purpose of collecting any and all such moneys due under any Pledged Collateral whenever payable;

(iii) to pay or discharge taxes, liens, security interests or other encumbrances levied or placed on or threatened against the Pledged Collateral; and

(iv) (A) to direct any party liable for any payment under any of the Pledged Collateral to make payment of any and all moneys due and to become due thereunder directly to Lender or as such attorney-in-fact shall direct; (B) to receive payment of and receipt for any and all moneys, claims and other amounts due and to become due at any time in respect of or arising out of any Pledged Collateral; (C) to commence and prosecute any suits, actions or proceedings at law or in equity in any court of competent jurisdiction to collect the Pledged Collateral or any portion thereof and to enforce any other right in respect of any Pledged Collateral; (D) to defend any suit, action or proceeding brought against Grantor with respect to any Pledged Collateral; (E) to settle, compromise or adjust any suit, action or proceeding described above and, in connection therewith, to give such discharges or releases as such attorney-in-fact may deem appropriate; and (F) generally to sell, transfer, pledge, make any agreement with respect to or otherwise deal with any of the Pledged Collateral as fully and completely as though such attorney-in fact were the absolute owner thereof for all purposes, and to do, at the option of such attorney-in-fact at Grantor's expense, at any time, or from time to time, all acts and things which such attorney-in-fact reasonably deems necessary to protect, preserve or realize upon the Pledged Collateral and the security interest of Lender therein, in order to effect the intent of this Agreement, all as fully and effectively as Grantor might do.

Grantor hereby ratifies, to the extent permitted by law, all that said attorney shall lawfully do or cause to be done by virtue hereof. This power of attorney is a power coupled with an interest and shall be irrevocable; provided, however, notwithstanding the grant of power of attorney in Sections 7(a) and 7(c) hereof, Lender shall not exercise its rights under such power of attorney unless Grantor fails to take any action required under this Agreement, and such failure shall continue for ten (10) business days after notice of such failure is given to said Grantor.

(b) The powers conferred on each attorney-in-fact hereunder are solely to protect the interest in the Pledged Collateral of Lender and shall not impose any duty upon any such attorney-in-fact to exercise any such powers. Each such attorney-in-fact shall be accountable only for amounts that it actually receives as a result of the exercise of such powers and neither it nor any of its officers, directors, employees or agents shall be responsible to Grantor for any act or failure to act unless such action or failure to act constitutes gross negligence.

(c) Grantor hereby authorizes Lender and each officer or agent of Lender at any time and from time to time upon the occurrence of any Event of Default, to execute, in connection with the sale provided for in Section 11 of this Agreement, any endorsements, Agreements or other instruments of conveyance or transfer with respect to any of the Pledged Collateral.

8. **Distributions.** During the continuance of an Event of Default, Grantor hereby grants Lender full irrevocable power and authority to receive and hold at any such time cash and non-cash distributions by Borrower on account of any of the Pledged Collateral (together with all interest, if any, earned thereon), which may be held free and clear of the liens created hereby, and to convert any such non-cash distributions to cash, and to apply any such cash distributions, interest or proceeds of conversion in the manner specified in Section 11(c) of this Agreement.

9. **Performance by Lender of Grantor's Obligations.** If a Grantor fails to perform or comply with any of its agreements with Lender contained herein and Lender, as provided for by the terms of this Agreement shall itself elect, perform or comply, or otherwise cause performance or compliance, with such agreement, (it being acknowledged and agreed that Lender has no obligation to so perform or comply or cause performance or compliance), the expenses of Lender incurred in connection with such performance or compliance, together with interest thereon at the rate following a default specified in the Note in effect from time to time shall be payable by the Grantor to Lender on demand and shall constitute Liabilities secured hereby.

10. **Default.** Any of the following shall constitute an "Event of Default" hereunder:

(a) A failure by a Grantor to observe or perform any obligation, covenant, condition, or agreement hereof to be performed by said Grantor which involves the payment of money, which is not cured within any applicable notice and cure period;

(b) A failure by a Grantor to observe or perform any nonmonetary obligation, covenant, condition, or agreement hereof to be performed by said Grantor (which is not otherwise included in Sections 10(c), (d) or (e)) which is not cured within any applicable notice and cure period;

(c) If a Grantor, directly or indirectly, sells, pledges, mortgages, assigns, transfers, or otherwise disposes of or creates or suffers to be created any lien, security interest, or encumbrance on any of the Pledged Collateral or the assets of Borrower without the prior consent of Lender;

(d) Any representation or warranty made by a Grantor in this Agreement is not true and correct in any material respect; or

(e) The occurrence of any Event of Default under any Loan Document.

11. **Remedies, Rights Upon Default.**

(a) If any Event of Default shall occur, Lender or Lender's designee may exercise in addition to all other rights and remedies granted to them in this Agreement and in any other instrument or agreement securing, evidencing or relating to the Liabilities, all rights and remedies of a secured party under the Code.

Without limiting the generality of the foregoing, Grantor expressly agrees that in any such event Lender, without demand of performance or other demand, advertisement or notice of any kind (except the notice specified below of time and place of public or private sale) to or upon the Grantor or any other person (all and each of which demands, advertisements and/or notices are hereby expressly waived), may collect, receive, appropriate and realize upon the Pledged Collateral, or any part thereof, and/or may sell, assign, give option or options to purchase, or sell or otherwise dispose of and deliver said Pledged Collateral (or contract to do so), or any part thereof, at public or private sale or sales, at any exchange or broker's board or at any of Lender's offices or elsewhere at such prices as it may deem best, for cash or on credit or for future delivery without the assumption of any credit risk. Grantor expressly acknowledges that private sales may be less favorable to a seller than public sales but that private sales shall nevertheless be deemed commercially reasonable and otherwise permitted hereunder. In view of the fact that federal and state securities laws and/or other applicable laws may impose certain restrictions on the method by which a sale of the Pledged Collateral may be effected, Grantor agrees that during the continuance of an Event of Default, Lender may, from time to time, attempt to sell all or any part of the Pledged Collateral by means of a private placement, restricting the prospective purchasers to those who will represent and agree that they are purchasing for investment only and not for distribution and who otherwise satisfy all of the requirements of applicable federal and state securities laws. In so doing, Lender may solicit offers to buy the Pledged Collateral, or any part thereof, for cash, from a limited number of investors deemed by Lender in its judgment to be financially responsible parties who might be interested in purchasing the Pledged Collateral, and if Lender solicits such offers, then the acceptance by Lender of the best offer obtained therefrom as determined by Lender shall be deemed to be a commercially reasonable method of disposing of the Pledged Collateral.

Lender or Lender's designee shall have the right upon any such public sale or sales, and, to the extent permitted by law, upon any such private sale or sales, to purchase the whole or any part of said Pledged Collateral so sold, free of any right or equity of redemption, which equity of redemption Grantor hereby waives and releases. At the request of Lender, Grantor agrees to deliver to Lender or any purchaser or purchasers of the Pledged Collateral any agreements, instruments and other documents evidencing or relating to the Pledged Collateral. Lender shall apply the net proceeds of any such collection, recovery, receipt, appropriation, realization or sale as provided in Section 11(c) of this Agreement. Only after so applying such net proceeds and after the payment by Lender of any other amount required by any provision of law, including Section 9-615 of the Code, need Lender account for the surplus, if any, to the Grantor. To the extent permitted by applicable law, Grantor waives all claims, damages, and demands against Lender arising out of the repossession, retention or sale of the Pledged Collateral. Grantor agrees that Lender need not give more than ten (10) days' notice (which notification shall be deemed given when mailed or delivered on an overnight basis, postage prepaid, addressed to the Grantor at their address referred to in Section 13 hereof) of the time and place of any public sale or of the time after which a private sale may take place and that such notice is reasonable notification of such matters.

(b) Grantor hereby waives presentment, demand, or protest (to the extent permitted by applicable law) of any kind in connection with this Agreement or any Pledged Collateral. Except for notices expressly provided for herein, Grantor hereby waives notice (to the extent permitted by applicable law) of any kind in connection with this Agreement.

(c) The proceeds of any sale, disposition or other realization upon all or any part of the Pledged Collateral shall be distributed by Lender in the following order of priorities:

first, to Lender in an amount sufficient to pay in full the expenses of Lender in connection with such sale, disposition or other realization, including all expenses, liabilities and advances incurred or made by Lender in connection therewith, including reasonable attorneys' fees and expenses;

second, to Lender until the other Liabilities are paid in full; and

finally, upon payment in full of all of the Liabilities, to Grantor, or its representative or as a court of competent jurisdiction may direct.

Grantor agrees to indemnify and hold harmless Lender, its directors, officers, employees, agents and parent, and subsidiary corporations and entities, and each of them, from and against any and all liabilities, obligations, claims, damages, or expenses incurred by any of them arising out of or by reason of entering into this Agreement or the consummation of the transactions contemplated by this Agreement and to pay or reimburse Lender for the fees and disbursements of counsel incurred in connection with any investigation, litigation or other proceedings (whether or not Lender is a party thereto) arising out of or by reason of any of the aforesaid. Any amounts properly due under this Section 11 shall be payable to Lender immediately upon demand. No indemnified party shall be entitled to be indemnified against its own gross negligence or willful misconduct.

(d) Grantor recognizes that Lender may be unable to effect a public sale of any or all of the Pledged Collateral by reason of certain prohibitions contained in the Securities Act of 1933, as amended from time to time (the "**Securities Act**") and applicable state securities laws, but may be compelled to resort to one or more private sales thereof to a restricted group of purchasers who will be obliged to agree, among other things, to acquire such Pledged Collateral for their own account for investment and not with a view to the distribution or resale hereof. Grantor acknowledges and agrees that any such private sale may result in prices and other terms less favorable to the Grantor than if such sale were a public sale and, notwithstanding such circumstances, agrees that any such private sale shall, to the extent permitted by law, be deemed to have been made in a commercially reasonable manner. Lender shall not be under any obligation to delay a sale of any of the Pledged Collateral for the period of time necessary to permit the issuer of such securities to register such securities under the Securities Act or under any applicable state securities laws, even if such issuer would agree to do so.

(e) Any liabilities or obligations on the part of the Grantor to Lender arising out this Agreement (including but not limited to this Section 11) shall be joint and several between the Grantor.

12. **Limitation on Lender's Duty in Respect of Pledged Collateral.** Except as expressly provided in the Code, Lender shall have no duty as to any Pledged Collateral in its possession or control, or in the possession or control of any agent or nominee of Lender, as to any income thereon or as to the preservation of rights against prior parties or any other rights pertaining thereto.

13. **Notices.** Any notice or other communication required or permitted to be given shall be in writing addressed, for Grantor, as set forth on the signature page hereof and, for the Lender, as set forth in the Mortgage, and may be delivered pursuant to and according to the Mortgage.

14. **Severability.** Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

15. **No Waiver; Cumulative Remedies.** Lender shall not, by any act, delay, omission or otherwise, be deemed to have waived any of its rights or remedies hereunder. No waiver hereunder shall be valid unless in writing signed by the party to be charged with such waiver and then only to the extent therein set forth. A waiver of any right or remedy hereunder on any one occasion shall not be construed as a bar to any right or remedy which Lender would otherwise have had on any future occasion. No failure to exercise nor any delay in exercising on the part of Lender any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or future exercise thereof or the exercise of any other right, power or privilege. The rights and remedies hereunder and under the other Loan Documents provided are cumulative and may be exercised singly or concurrently, and are not exclusive of any rights and remedies provided by law. Lender may resort to and

realize on the Pledged Collateral simultaneously with any acts or proceedings initiated by Lender in its sole and conclusive discretion to resort to or realize upon any other sources of repayment of the Liabilities, including, but not limited to, collateral granted by other security agreements and the personal liability of Grantor and any person or entity which has guaranteed repayment of the Liabilities. None of the terms or provisions of this Agreement may be waived, altered, modified or amended except by an instrument in writing, duly executed by the Grantor, as may be applicable, and Lender.

16. **Governing Law.** This Agreement was negotiated in the State of New York, and made by the Grantor and accepted by Lender in the State of New York, which state the parties agree has a substantial relationship to the parties and to the underlying transaction embodied hereby, and in all respects, including, without limiting the generality of the foregoing, matters of construction, validity and performance, this Agreement and the obligations arising hereunder shall be governed by, and construed in accordance with, the laws of the State of New York applicable to contracts made and performed in such state (without regard to principles of conflict of laws) and any applicable law of the United States of America. To the fullest extent permitted by law, the Grantor and any endorser, sureties, guarantors and all others who are, or who may become liable for the payment of amounts secured hereof, severally, irrevocably, and unconditionally waive any claim to assert that the law of any other jurisdiction governs this Agreement and this Agreement shall be governed by and construed in accordance with the laws of the State of New York.

Any legal suit, action or proceeding against Lender or Grantor arising out of or relating to this Agreement may at Lender's option be instituted in any federal or state court in the City of New York, County of New York or in a court of record of the State of Ohio in Franklin County, Ohio or in the United States District Court for the Southern District of Ohio, and Grantor waives any objections which it may now or hereafter have based on venue and/or forum non conveniens of any such suit, action or proceeding, and Grantor hereby irrevocably submits to the jurisdiction of any such court in any suit, action or proceeding. Grantor does hereby designate and appoint:

Chaim C. Zlotowitz, Esq.
Law Offices of Chaim C. Zlotowitz, Esq. PLLC
140A Washington Avenue, Suite 203
Cedarhurst, New York 11516

as its authorized agent to accept and acknowledge on its behalf service of any and all process which may be served in any such suit, action or proceeding in City of New York, County of New York, and agrees that service of process upon said agent at said address and written notice of said service mailed or delivered to Grantor in the manner provided herein shall be deemed in every respect effective service of process upon Grantor in any such suit, action or proceeding in the State of New York. Grantor (i) shall give prompt notice to Lender of any changed address of its authorized agent hereunder, (ii) may at any time and from time to time designate a substitute authorized agent with an office in New York (which substitute agent and office shall be designated as the person and address for service of process), and (iii) shall promptly designate such a substitute if its authorized agent ceases to have an office in New York or is dissolved without leaving a successor.

17. **Successors and Assigns.** This Agreement and all obligations of Grantor hereunder shall be binding upon the successors and assigns of Grantor, except that Grantor shall not, unless otherwise expressly provided in the Loan Documents and then only to the extent provided in the Loan Documents and subject to any conditions set forth therein, shall have the right to assign its rights hereunder or any interest herein without the prior written consent of Lender. All rights and remedies of Lender hereunder shall inure to the benefit of Lender and its participants, successors and assigns. Neither this Agreement nor anything set forth herein is intended to, nor shall it, confer any rights on any person or entity other than the parties hereto and all third party rights are expressly negated.

18. **Termination.** This Agreement, and the Agreements, pledges, security interests and power of attorney created or granted hereby, shall terminate when the Liabilities have been fully and irrevocably paid and satisfied (exclusive of provisions that survive full payment), at which time Lender shall promptly release, reassign and deliver to Grantor, as then applicable, all Pledged Collateral and related documents then in the possession of Lender, including termination statements under the Code, all without recourse upon, or warranty whatsoever, by Lender and at the cost and expense of the Grantor.

19. **Injunctive Relief.** Grantor recognizes that in the event the Grantor fails to perform, observe or discharge any of their obligations hereunder, no remedy of law will provide adequate relief to Lender, and agrees that Lender shall be entitled to temporary and permanent injunctive relief in any such case without the necessity of proving actual damages.

20. **Waiver of Subrogation.** Grantor shall not have rights of subrogation as to any of the Pledged Collateral or the Liabilities until full and complete performance and payment of the Liabilities.

21. **WAIVER OF JURY TRIAL.** TO THE MAXIMUM EXTENT PERMITTED BY LAW, GRANTOR HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES THE RIGHT TO A TRIAL BY JURY WITH RESPECT TO ANY LITIGATION BASED HEREON, ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENT (WHETHER VERBAL OR WRITTEN) OR ACTION OF EITHER PARTY OR ANY EXERCISE BY ANY PARTY OF THEIR RESPECTIVE RIGHTS HEREUNDER OR IN ANY WAY RELATING TO THE LOAN OR THE COLLATERAL (INCLUDING ANY ACTION TO RESCIND OR CANCEL THIS AGREEMENT, AND ANY CLAIM OR DEFENSE ASSERTING THAT THIS AGREEMENT WAS FRAUDULENTLY INDUCED OR IS OTHERWISE VOID OR VOIDABLE). THIS WAIVER IS A MATERIAL INDUCEMENT FOR LENDER TO MAKE THE LOAN.

22. **Subordination and Release.** All indebtedness now or hereafter owing by Borrower to Grantor for borrowed money or otherwise is hereby subordinated to the payment in full of the Liabilities, and during the continuance of a default under this Agreement or any of the other Loan Documents, Grantor shall not accept payment of all or any portion of such subordinated indebtedness, and if any such payment is made to Grantor, the Grantor shall receive such payment in trust for the benefit of Lender and shall promptly pay over such payment to Lender. If Lender succeeds to the interest(s) of a Grantor in Borrower, any and all obligations of Borrower to the Grantor, whether in its capacity as a member in Borrower or otherwise (including without limitation any indebtedness of Borrower to the Grantor and any obligation of Borrower under the Formation Agreement or applicable law to indemnify the Grantor) and whether arising before, on or after the date Lender succeeds to the interest of the Grantor, shall be immediately released and discharged and Borrower shall have no further obligations or liabilities whatsoever to the Grantor.

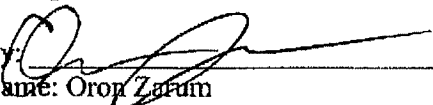
[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, Grantor has executed this Agreement as of the date first above written.

GRANTOR:

APEX COLONIAL HOLDINGS LLC, a
Delaware limited liability company

By: Apex Colonial Investors LLC, a New
Jersey limited liability company, its
Manager

By: 
Name: Oron Zarem
Title: Manager

BORROWER ACKNOWLEDGMENT

Borrower hereby acknowledges the above Agreement as of August __, 2020, and Borrower covenants and agrees (i) to record the Agreement and pledge evidenced hereby on its books and records, (ii) not to effect any further transfer or Agreement of the Pledged Collateral without Lender's prior written consent, (iii) to comply with the instructions of Lender with respect to the Pledged Collateral, except as otherwise set forth in the Loan Documents without further consent of Grantor, (iv) that, after receipt of notice from Lender of the occurrence of an Event of Default, not to make any distribution, directly or indirectly, to or for the benefit of Grantor, (v) that the Pledged Collateral are not (a) "investment company securities" (within the meaning of Section 8-103 of the Code) or (b) dealt in or traded on securities exchanges or in securities markets and none of the terms of any Pledged Collateral or the Borrower's Formation Agreement provides that it is a "security" (within the meaning of Sections 8-102(a)(15) and 8-103 of the Code), (vi) that there are no liens of Borrower on the Pledged Collateral or any adverse claims thereto for which Borrower has a duty under Section 8-403 of the Code, and (vii) Borrower has not made any loans to Grantor.

Except as otherwise set forth in the Loan Documents, Borrower further covenants and agrees, without the prior express written consent of Lender, not to consent to any transfers of the Pledged Collateral or to issue any certificate evidencing the Pledged Collateral until such time as all of the Liabilities are fully and irrevocably satisfied. Until the Liabilities have been paid in full (exclusive of provisions which shall survive full payment), Borrower agrees to disregard any request made by Grantor or any other person which contravenes the instructions of Lender with respect to the Pledged Collateral. If there is an Event of Default and the Lender forecloses on the Pledged Collateral in accordance with this Agreement, Borrower will use its best efforts to take and adopt necessary and appropriate company action required for the admission of the purchaser of the Pledged Collateral as a substituted member of the Borrower, including presenting a copy of the Formation Agreement to the purchaser of the Pledged Collateral (or applicable portion thereof) for that purchaser's signature acknowledging the purchaser's assent to be a party to and otherwise be bound by the Formation Agreement.

BORROWER:

APEX COLONIAL OH LLC, a Delaware limited liability company

By: 
Name: Oron Zarun
Title: Authorized Signatory

EXHIBIT 5

(Above Space for Recorder's Use)

ASSIGNMENT OF LEASES AND RENTS

(Maximum Principal Indebtedness Not to Exceed \$15,500,000.00)

THIS INSTRUMENT PREPARED BY
AND AFTER RECORDING RETURN TO:

SAUL EWING ARNSTEIN & LEHR
ATTN: ANTHONY KANG
701 BRICKELL AVENUE, 17th FLOOR
MIAMI, FLORIDA 33131

Addresses: See Exhibit B attached hereto
Parcel Numbers: See Exhibit B attached hereto

ASSIGNMENT OF LEASES AND RENTS

This Assignment of Leases and Rents (this "Assignment") is made this ____ day of August, 2020, between APEX COLONIAL OH LLC, a Delaware limited liability company, whose mailing address is 2365 Nostrand Avenue, Brooklyn, New York 11210 (hereinafter "Assignor") and EF SBC 2015-2 LLC, a Delaware limited liability company, the address of which is 53 Forest Avenue, Old Greenwich, CT 06870 (hereinafter "Assignee").

RECITALS

Assignor, as Borrower (also sometimes referred to as Maker), has executed and delivered to Assignee a Promissory Note of even date herewith in the original principal amount of Fifteen Million Five Hundred Thousand and No/100 Dollars (\$15,500,000.00) (the "Note").

To secure payment of the Note, Assignor has executed and delivered to Assignee an Open-End Mortgage, Security Agreement and Fixture Filing of even date herewith (herein, together with all future amendments and supplements thereto, called the "Mortgage"), covering certain property (herein called the "Mortgaged Property") which, among other things, includes the real estate described in Exhibit "A" attached hereto and the buildings, improvements, and fixtures now or hereafter located thereon.

Assignee, as a condition to making the loan evidenced by the Note, has required the execution of this Assignment.

ACCORDINGLY, in consideration of the premises and in further consideration of the sum of One Dollar paid by Assignee to Assignor, the receipt of which is hereby acknowledged, Assignor does hereby grant, transfer and assign to Assignee all of the right, title and interest of Assignor in and to (i) any and all present or future leases or tenancies, whether written or oral, covering or affecting any or all of the Mortgaged Property (all of which together with any and all extensions, modifications and renewals thereof, are hereinafter collectively referred to as the "Leases" and each of which is referred to as a "Lease"), and (ii) all rents, profits and other income or payments of any kind due or payable or to become due or payable to Assignor as the result of any use, possession or occupancy of all or any portion of the Mortgaged Property (all of which are hereinafter collectively referred to as "Rents"), whether the Rents accrue before or after foreclosure of the Mortgage or during the periods of redemption thereof, all for the purpose of securing:

- a) Payment of all indebtedness evidenced by the Note and all other sums secured by the Mortgage or this Assignment; and
- b) Performance and discharge of each and every obligation, covenant and agreement of Assignor contained herein and in the Mortgage.

ASSIGNOR WARRANTS AND COVENANTS that it is and will remain the absolute owner of the Rents and Leases free and clear of all liens and encumbrances other than the lien granted herein; that

it has not heretofore assigned or otherwise encumbered its interest in any of the Rents or Leases to any party; that it has the right under applicable law, under the Leases, under its formation documents and Operating Agreement, and otherwise to execute and deliver this Assignment and keep and perform all of its obligations hereunder; that it will warrant and defend the Leases and Rents against all adverse claims, whether now existing or hereafter arising.

Assignor further covenants and agrees with Assignee as follows:

1. Performance of Leases. Assignor will faithfully abide by, perform and discharge each and every obligation, covenant and agreement which it is now or hereafter becomes liable to observe or perform under any present or future Lease, and, at its sole cost and expense, enforce or secure the performance of each and every obligation, covenant, condition and agreement to be performed by the tenant under each and every Lease. Assignor will observe and comply with all provisions of law applicable to the operation and ownership of the Mortgaged Property. Assignor will give prompt written notice to Assignee of any notice of default on the part of Assignor with respect to any Lease received from the tenant thereunder, and will also at its sole cost and expense, appear in and defend any action or proceeding arising under, growing out of or in any manner connected with any Lease or the obligations, duties or liabilities of Assignor or any tenant thereunder. Assignor will not lease or otherwise permit the use of all or any portion of the Mortgaged Property for rent that is below the fair market rent for such property.

2. Collection of Rents. Assignor will not collect or accept any Rents for the use or occupancy of the Mortgaged Property for more than one month in advance. Security deposits shall not be deemed Rents for purposes of this paragraph.

3. Protecting the Security of This Assignment. Should Assignor fail to perform or observe any covenant or agreement contained in this Assignment, then Assignee, but without obligation to do so and without releasing the Assignor from any obligation hereunder, may make or do the same in such manner and to such extent as Assignee may deem appropriate to protect the security hereof, including, specifically, without limiting its general powers, the right to appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Assignee, and also the right to perform and discharge each and every obligation, covenant and agreement of Assignor contained in the Leases and in exercising any such powers to pay necessary costs and expenses, employ counsel and pay reasonable attorneys' fees. Assignor will pay immediately upon demand all sums expended by Assignee under the authority of this Agreement, together with interest thereon at the rate stated in the Note, and the same shall be added to said indebtedness and shall be secured hereby and by the Mortgage.

4. Present Assignment. This Assignment shall constitute a perfected, absolute and present assignment, provided that Assignor shall have the right to collect, but not prior to accrual (except as permitted by paragraph 2 above), all of the Rents, and to retain, use and enjoy the same unless and until an Event of Default (also sometimes referred to as a "Default") shall occur under the Mortgage or Assignor shall have breached any warranty or covenant in this Assignment. Any Rents which accrue prior to an Event of Default under the Mortgage but are paid thereafter shall be paid to Assignee.

5. Survival of Obligation to Comply with Mortgage and This Assignment. This Assignment is given as security in addition to the Mortgage. Assignor covenants and agrees to observe and comply with all terms and conditions contained in the Mortgage and in this Assignment and to preclude any Event of Default from occurring under the Mortgage. All of Assignor's obligations under the Mortgage and this Assignment shall survive foreclosure of the Mortgage and Assignor covenants and agrees to observe and comply with all terms and conditions of the Mortgage and this Assignment and to preclude any Event of Default from occurring under the Mortgage throughout any period of redemption after foreclosure of the Mortgage.

6. Default; Remedies. Upon the occurrence of any Event of Default specified in the Mortgage or upon the breach of any warranty or covenant in this Assignment, Assignee may, at its option, at any time:

- a) in the name, place and stead of Assignor and without becoming a mortgagee in possession (i) enter upon, manage and operate the Mortgaged Property or retain the services of one or more independent contractors to manage and operate all or any part of the Mortgaged Property; (ii) make, enforce, modify and accept surrender of the Leases; (iii) obtain or evict tenants, collect, sue for, fix or modify the Rents and enforce all rights of Assignor under the Leases; and (iv) perform any and all other acts that may be necessary or proper to protect the security of this Assignment.
- b) with or without exercising the rights set forth in subparagraph (a) above, give or require Assignor to give, notice to any or all tenants to pay all Rents under the Leases directly to the Assignee.
- c) without regard to waste, adequacy of the security or solvency of Assignor, apply for, and Assignor hereby consents to, the appointment of a receiver of the Mortgaged Property, whether or not foreclosure proceedings have been commenced under the Mortgage, and if such proceedings have been commenced, whether or not a foreclosure sale has occurred.

The exercise of any of the foregoing rights or remedies and the application of the rents, profits and income pursuant to paragraph 7, shall not cure or waive any Event of Default (or notice of default) under the Mortgage or invalidate any act done pursuant to such notice.

7. Application of Rents, Profits and Income. All Rents collected by Assignee or the receiver each month shall be applied as follows:

- a) to payment of all reasonable fees of the receiver approved by the court;
- b) to payment of all tenant security deposits then owing to tenants under any of the Leases pursuant to applicable law;
- c) to payment of all prior or current real estate taxes and special assessments with respect to the Mortgaged Property, or if the Mortgage requires periodic escrow payments for such taxes and assessments, to the escrow payments then due;

- d) to payment of all premiums then due for the insurance required by the provisions of the Mortgage, or if the Mortgage requires periodic escrow payments for such premiums, to the escrow payments then due;
- e) to payment of expenses incurred for normal maintenance of the Mortgaged Property;
- f) if received prior to any foreclosure sale of the Mortgaged Property, to Assignee for payment of the indebtedness secured by the Mortgage or this Assignment, but no such payment made after acceleration of the indebtedness shall affect such acceleration;
- g) if received during or with respect to the period of redemption after a foreclosure sale of the Mortgaged Property:
 - 1) if the purchaser at the foreclosure sale is not the Assignee, first to Assignee to the extent of any deficiency of the sale proceeds to repay the indebtedness secured by the Mortgage or this Assignment, second to the purchaser as a credit to the redemption price, but if the Mortgaged Property is not redeemed, then to the purchaser of the Mortgaged Property;
 - 2) if the purchaser at the foreclosure sale is the Assignee, to Assignee to the extent of any deficiency of the sale proceeds to repay the indebtedness secured by the Mortgage or this Assignment and the balance to be retained by Assignee as a credit to the redemption price, but if the Mortgaged Property is not redeemed, then to Assignee, whether or not any such deficiency exists.

The rights and powers of Assignee under this Assignment and the application of Rents under this paragraph 7 shall continue until expiration of the redemption period from any foreclosure sale, whether or not any deficiency remains after a foreclosure sale.

8. **No Liability for Assignee.** Assignee shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability of Assignor under the Leases. This Assignment shall not operate to place upon Assignee responsibility for the control, care, management or repair of the Mortgaged Property or for carrying out of any of the terms and conditions of the Leases. Assignee shall not be responsible or liable for any waste committed on the Mortgaged Property, for any dangerous or defective condition of the Mortgaged Property, for any negligence in the management, upkeep, repair or control of said Mortgaged Property or for failure to collect the Rents.

9. **Assignor's Indemnification.** Assignor shall and does hereby agree to indemnify and to hold Assignee harmless of and from any and all claims, demands, liability, loss or damage (including all costs, expenses, and reasonable attorney's fees in the defense thereof) asserted against, imposed on or incurred by Assignee in connection with or as a result of this Assignment or the exercise of any rights or remedies under this Assignment or under the Leases or by reason of any alleged obligations or undertakings of Assignee to perform or discharge any of the terms, covenants or agreements contained in the Leases unless the claims, demands, liabilities, losses or damages (including all related costs, expenses, and reasonable attorney's fees) are caused by Assignee's gross negligence or willful or intentional acts.

Should Assignee incur any such liability, the amount thereof, together with interest thereon at the rate stated in the Note, shall be secured hereby and by the Mortgage and Assignor shall reimburse the Assignee therefor immediately upon demand.

10. Authorization to Tenant. Upon notice from Assignee that it is exercising the remedy set forth in paragraph 6(b) of this Assignment, the tenants under the Leases are hereby irrevocably authorized and directed to pay to Assignee all sums due under the Leases, and Assignor hereby consents and directs that said sums shall be paid to Assignee without the necessity for a judicial determination that a default has occurred hereunder or under the Mortgage or that Assignee is entitled to exercise its right hereunder, and to the extent such sums are paid to Assignee, Assignor agrees that the tenant shall have no further liability to Assignor for the same. The signature of Assignee alone shall be sufficient for the exercise of any rights under this Assignment and the receipt of Assignee alone for any sums received shall be a full discharge and release therefor to any such tenant or occupant of the Mortgaged Property. Checks for all or any part of the Rents collected under this Assignment shall upon notice from Assignee be drawn to the order of Assignee.

11. Satisfaction. Upon the payment in full of all indebtedness secured hereby as evidenced by a recorded satisfaction of the Mortgage executed by Assignee, this Assignment shall, without the need for any further satisfaction or release, become null and void and be of no further effect.

12. Assignee an Attorney-In-Fact. Assignor hereby irrevocably appoints Assignee, and its successors and assigns, as its agent and attorney-in-fact, which appointment is coupled with an interest, with the right but not the duty to exercise any rights or remedies hereunder and to execute and deliver during the term of this Assignment such instruments as Assignee may deem appropriate to make this Assignment and any further assignment effective, including without limiting the generality of the foregoing, the right to endorse on behalf and in the name of Assignor all checks from tenants in payment of Rents that are made payable to Assignor.

13. Assignee Not a Mortgagee in Possession. Nothing herein contained and no actions taken pursuant to this Assignment shall be construed as constituting Assignee a mortgagee in possession.

14. Specific Assignment of Leases. Assignor will transfer and assign to Assignee, upon written notice by Assignee, any and all specific Leases that Assignee requests. Such transfer or assignment by Assignor shall be upon the same or substantially the same terms and conditions as are herein contained, and Assignor will properly file or record such assignments, at Assignor's expense, if requested by Assignee.

15. Warranties and Representations regarding the Leases. Assignor warrants:

- a) that it is Lessor pursuant to the Leases;
- b) that the Leases have not been modified and are in full force and effect;

- c) that it will not modify without Assignee's written consent or in any way alter any of the terms of the Leases, nor to terminate the Leases or accept a surrender of the Leases;
- d) that it will not waive or in any way release or allow substitution of performance under the terms of the Leases by tenant thereof;
- e) that the Leases are free and clear of any and all liens and encumbrances;
- f) that the Leases have not been previously pledged or assigned to any other party; and
- g) that it is not in default of any of the terms of the Leases and has no notice of any default under the Leases.

16. Unenforceable Provisions Severable. All rights, powers and remedies provided herein may be exercised only to the extent that the exercise thereof does not violate any applicable law, and are intended to be limited to the extent necessary so that they will not render Assignment invalid, unenforceable or not entitled to be recorded, registered or filed under any applicable law. If any term of this Assignment shall be held to be invalid, illegal or unenforceable, the validity of other terms hereof shall in no way be affected thereby. It is the intention of the parties hereto, however, that this Assignment shall confer upon Assignee the fullest rights, remedies and benefits available pursuant to applicable law.

17. Successors and Assigns. The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to the respective successors and assigns of Assignor and Assignee, including any purchaser at a foreclosure sale.

18. Captions; Amendments; Notices. The captions and headings of the paragraphs of this Assignment are for convenience only and shall not be used to interpret or define the provisions of this Assignment. This Assignment can be amended only in writing signed by Assignor and Assignee. Any notice from Assignee to Assignor under this Assignment shall be deemed to have been given when given by Assignee in accordance with the requirements for notice by the Mortgagee under the Mortgage.

19. Applicable Law; Service of Process. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS ASSIGNMENT, EXCEPT WITH RESPECT TO MATTERS RELATING TO THE CREATION, PERFECTION AND PROCEDURES RELATING TO THE ENFORCEMENT OF THE LIENS AND SECURITY INTERESTS CREATED BY THIS ASSIGNMENT, THIS ASSIGNMENT SHALL BE GOVERNED BY, AND BE CONSTRUED IN ACCORDANCE WITH, THE LAWS OF NEW YORK, IT BEING UNDERSTOOD THAT, EXCEPT AS EXPRESSLY SET FORTH ABOVE IN THIS SECTION AND TO THE FULLEST EXTENT PERMITTED BY THE LAW OF OHIO, THE LAW OF THE STATE OF NEW YORK SHALL GOVERN ALL MATTERS RELATING TO THIS ASSIGNMENT AND ALL OF THE INDEBTEDNESS OR OBLIGATIONS ARISING HEREUNDER OR THEREUNDER.

Any legal suit, action or proceeding against Assignor or Assignee arising out of or relating to this Assignment may at Assignee's option be instituted in any federal or state court in the City of New York,

County of New York or in a court of record of the State of Ohio in Franklin County, Ohio or in the United States District Court for the Southern District of Ohio and Assignor waives any objections which it may now or hereafter have based on venue and/or forum non conveniens of any such suit, action or proceeding, and Assignor hereby irrevocably submits to the jurisdiction of any such court in any suit, action or proceeding. Assignor does hereby designate and appoint:

Chaim C. Zlotowitz, Esq.
Law Offices of Chaim C. Zlotowitz, Esq. PLLC
140A Washington Avenue, Suite 203
Cedarhurst, New York 11516

as its authorized agent to accept and acknowledge on its behalf service of any and all process which may be served in any such suit, action or proceeding in City of New York, County of New York, and agrees that service of process upon said agent at said address and written notice of said service mailed or delivered to Assignor in the manner provided herein shall be deemed in every respect effective service of process upon Assignor in any such suit, action or proceeding in the State of New York. Assignor (i) shall give prompt notice to Assignee of any changed address of its authorized agent hereunder, (ii) may at any time and from time to time designate a substitute authorized agent with an office in New York (which substitute agent and office shall be designated as the person and address for service of process), and (iii) shall promptly designate such a substitute if its authorized agent ceases to have an office in the State of New York or is dissolved without leaving a successor.

20. Waiver of Right to Jury Trial. ASSIGNOR AND ASSIGNEE HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY AND ALL RIGHT THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT TO ANY LITIGATION (INCLUDING BUT NOT LIMITED TO, ANY CLAIMS, CROSS CLAIMS OR THIRD PARTY CLAIMS ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS COLLATERAL ASSIGNMENT, THE OTHER LOAN DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREIN. ASSIGNOR HEREBY CERTIFIES THAT NO REPRESENTATIVE OR AGENT OF THE ASSIGNEE NOR THE ASSIGNEE'S COUNSEL HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT THE ASSIGNEE WOULD NOT, IN THE EVENT OF SUCH LITIGATION, SEEK TO ENFORCE THIS WAIVER OF RIGHT TO JURY TRIAL PROVISION. ASSIGNOR ACKNOWLEDGES THAT THE ASSIGNEE HAS BEEN INDUCED TO ENTER INTO THE LOAN, INCLUDING THIS ASSIGNMENT, BY, INTER ALIA, THE PROVISIONS OF THIS PARAGRAPH.

(EXECUTION PAGE TO FOLLOW).

IN WITNESS WHEREOF Assignor has executed this Assignment as of the day and year first-above written.


APEX COLONIAL OH LLC, a Delaware limited liability company

By: 
Name: Oron Zarum
Title: Authorized Signatory

STATE OF NJ)
) SS.
COUNTY OF Ocea)

On the 26 day of August, 2020 before me, the undersigned notary public, personally appeared Oron Zarum, the Authorized Signatory of APEX COLONIAL OH LLC, a Delaware limited liability company, and proved to me through satisfactory evidence of identification, being (check whichever applies): ☐ driver's license or other state or federal governmental document bearing a photographic image, ☐ oath or affirmation of a credible witness known to me who knows the above signatory, or ☐ my own personal knowledge of the identity of the signatory, to be the person whose name is signed on the preceding Assignment of Leases and Rents, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose in the aforesaid capacity as Authorized Signatory of the Assignor.

Yehudis S. Zarum
Notary Public
State of New Jersey
My Commission Expires August 15, 2021


Notary Public
My commission expires: 8/15/2021

-Signature Page to Assignment of Leases and Rents-

EXHIBIT "A"

LEGAL DESCRIPTION

All that certain lot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the City of Columbus, County of Franklin, State of Ohio.

Tract I:

Being located in Section 17, Township 12, Range 21, Refugee Lands, more particularly described as follows:

Beginning at a 3/4-inch iron pipe found in the Western right-of-way line of Rand Avenue and at the Southeastern corner of Lot 50 as the same is shown upon the recorded Plat of "Barnett Heights Amended", of record in Plat Book 27, Page 74;

Thence with the Westerly right-of-way line of Rand Avenue, as the same is shown upon the recorded Plat of "Dedication of Rand Avenue and Allendale Drive", of record in Plat Book 32, Page 104, the following Eight (8) courses:

- 1) South 3 deg. 32' 06" West, a distance of 120.35 feet to a found 5/8-inch rebar (bent);
- 2) South 14 deg. 21' 51" West, a distance of 28.66 feet to a set 3/4-inch iron pipe;
- 3) South 3 deg. 53' 06" West, a distance of 404.97 feet to found 5/8-inch rebar at a point of curvature;
- 4) Thence with a curve to the left, having a radius of 230.00 feet, an arc length of 100.42 feet, a central angle of 25 deg. 00' 53" and a chord which bears South 8 deg. 33' 59" East, a chord distance of 99.62 feet to a set 3/4-inch iron pipe at the point of reverse curvature;
- 5) Thence with a curve to the right, having a radius of 170.00 feet, an arc length of 72.74 feet, a central angle of 24 deg. 31' 02" and a chord which bears South 8 deg. 48' 55" East, a chord distance of 72.19 feet to a found 5/8-inch rebar at the point of tangency;
- 6) South 3 deg. 26' 36" West, a distance of 55.00 feet to a found 5/8-inch rebar;
- 7) South 13 deg. 26' 41" West, a distance of 28.79 feet to a found 5/8-inch rebar;
- 8) South 3 deg. 26' 36" West, a distance of 116.81 feet to a found 3/4-inch iron pipe at the intersection of the Westerly right-of-way line of said Rand Avenue and the Northerly right-of-way line of Livingston Avenue;

Thence North 86 deg. 30' 00" West, along the North right-of-way line of Livingston Avenue, a distance of 437.31 feet to a found 3/4-inch pinch top at the Southeast corner of a 0.792 acre tract, conveyed to Katja R. Turner, of record in Instr. No. 200507080134653;

Thence North 3 deg. 17' 48" East, with the Easterly line of said 0.792 acre tract, and the Easterly line of a 1.95 acre tract, conveyed to City of Columbus, Ohio, of record in D.B. 2452, Page 511, and the Easterly line of a 3.405 acre tract, conveyed to City of Columbus, Ohio, of record in Instr. No. 200602100027249, a distance of 821.60 feet to a set 3/4 iron pipe in the Southerly line of a 0.364 acre tract, conveyed to Patricia A. Johnson, of record in O.R. 14527 H09;

Thence South 86 deg. 44' 14" East, with the Southerly line of said 0.364 acre tract, and the Southerly line of a 0.364 acre tract, conveyed to Anena Moore, of record in O.R. 07763 B16, and the Southerly line of a 0.343 acre tract, conveyed to Robert E. & Veronica J. Owens, of record in O.R. 09708 J01, and the Southerly line of a 0.364 acre tract, conveyed to Charlene Peachey & Geraldine Peachey Allen, of record in Instr. No. 200506160116684, and the Southerly line of a 0.130 acre tract, conveyed to Victoria L. Jones, of record in Instr. No. 200001070005865, a distance of 265.03 feet to a found 5/8-inch rebar at the South Easterly corner of said 0.130 acre tract;

Thence North 4 deg. 08' 56" East, with the Easterly line of said 0.130 acre tract, a distance of 99.52 feet to a found 5/8-inch rebar in the Easterly line of said 0.130 acre tract, and at the Southwest corner of said Lot 50 as the same is shown upon the recorded Plat of "Barnett Heights Amended", of record in Plat Book 32, Page 104;

Thence South 86 deg. 15' 31" East, with the Southerly line of said Lot 50, a distance of 150.85 feet, returning to the point of Beginnings, and containing 8.272 acres of land more or less, being subject to all restrictions, easements, and rights-of-way of previous record.

Basis of Bearings:

The centerline of Livingston Avenue was assigned a bearing of South 86 deg. 30' East as shown on the record plat of Berwick Arms, of record in Plat Book 34, Page 79.

Tract II:

Being located in Section 17, Township 12, Range 21, Refugee Lands, more particularly described as follows:

Beginning at a 3/4-inch iron pipe found in the Southerly right-of-way line of Allendale Drive and at the Northwest corner of Lot 12, as the same is shown upon the recorded Plat of "Berwick Arms", of record in Plat Book 34, Page 79;

Thence South 3 deg. 38' 36" West, with the Westerly line of said Lot 12, a distance of 120.00 feet to a found 3/4-inch iron pipe;

Thence South 86 deg. 21' 24" East, with the Southerly line of said Lot 12 and the Southerly line of Lot 13 and Lot 14, as the same is shown upon the recorded plat of "Berwick Arms", of record in Plat Book 34, Page 79, a distance of 167.26 feet to a found 3/4-inch iron pipe at the Southwesterly corner of Reserve "D" a 0.396 acre tract, (by survey), conveyed to Colonial Village Berwick, LLC, of record in Instr. No. 200605020083518;

Thence South 34 deg. 38' 34" East, with the Southerly line of said 0.396 acre tract, a distance of 117.21 feet to a set 3/4 iron pipe at the Northwesterly corner of Lot 15, as the same is shown upon the recorded Plat of "Berwick Arms", of record in Plat Book 34;

Thence South 3 deg. 26' 36" West, with the Westerly line of Lots 15 through 23, inclusive, as the same is shown upon the recorded Plat of "Berwick Arms", of record in Plat Book 34, Page 79, a distance of 537.65 feet to a found 3/4-inch pinch top at the Southwest corner of said Lot 23, and in the Northerly right-of-way line of Livingston Avenue;

Thence North 86 deg. 30' 00" West, along the North right-of-way line of Livingston Avenue, a distance of 525.55 feet to a found 3/4-inch iron pipe at the intersection of the North right-of-way of Livingston Avenue and the East right-of-way line of Rand Avenue;

Thence with the Easterly right-of-way line of Rand Avenue, as the same is shown upon the recorded Plat of "Dedication of Rand Avenue and Allendale Drive", of record in Plat Book 32, Page 104, the following Six (6)

courses:

- 1) North 3 deg. 26' 36" East, a distance of 116.88 feet to a found 5/8-inch rebar;
- 2) North 6 deg. 33' 29" West, a distance of 28.79 feet to a found 5/8-inch rebar;
- 3) North 3 deg. 26' 36" East, a distance of 55.00 feet to a set 3/4-inch iron pipe at a point of curvature;
- 4) Thence with a curve to the left, having a radius of 230.00 feet, an arc length of 98.42 feet, a central angle of 24 deg. 31' 02" and a chord which bears North 8 deg. 48' 55" West, a chord distance of 97.67 feet to a found 5/8-inch rebar iron pin at a point of reverse curvature;
- 5) Thence with a curve to the right, having a radius of 170.00 feet, an arc length of 73.86 feet, a central angle of 24 deg. 53' 37" and a chord which bears North 8 deg. 37' 37" West, a chord distance of 73.28 feet to a set 3/4-inch iron pipe at the point of tangency;
- 6) North 3 deg. 53' 06" East, a distance of 373.82 feet to a found 5/8-inch rebar at a point of curvature;

Thence with a curve to the right, having a radius of 10.00 feet, an arc length of 15.67 feet, a central angle of 89 deg. 45' 30" and a chord which bears North 48 deg. 45' 51" East, a chord distance of 14.11 feet, to a found 5/8-inch rebar, at the point of tangency and being in the Southerly right-of-way of said Allendale Drive;

Thence South 86 deg. 21' 24" East, along the Southerly right-of-way line of Allendale Drive, a distance of 314.56 feet, returning to the point of Beginnings, and containing 8.758 acres of land more or less, being subject to all restrictions, easements, and right-of-way of previous record.

Basis of Bearings:

The centerline of Livingston Avenue was assigned a bearing of South 86 deg. 30' East as shown on the record Plat of Berwick Arms, of record in Plat Book 34, Page 79.

Tract III:

Being located in Section 17, Township 12, Range 21, Refugee Lands, more particularly described as follows:

Beginning at a 3/4-inch iron pipe found in the Northerly right-of-way line of Allendale Drive and at the Southwest corner of Lot 11, as the same is shown upon the recorded Plat of "Berwick Arms", of record in Plat Book 34, Page 79;

Thence North 86 deg. 21' 24" West, with the Northerly right-of-way line of Allendale Drive as the same is shown upon the recorded Plat of "Dedication of Rand Avenue and Allendale Drive", of record in Plat Book 32, Page 104, a distance of 259.05 feet to a found 5/8-inch rebar at a point of curvature;

Thence with a curve to the right, having a radius of 10.00 feet, an arc length of 15.69 feet, a central angle of 89 deg. 53' 30" and a chord which bears North 41 deg. 24' 39" West, a chord distance of 14.13 feet to a found 5/8-inch rebar, at the point of tangency and being in the Easterly right-of-way of said Rand Avenue, as the same is shown upon the recorded Plat of "Dedication of Rand Avenue and Allendale Drive", of record in Plat Book 32, Page 104;

Thence North 3 deg. 32' 06" East, along the Easterly right-of-way line of said Rand Avenue, a distance of 110.31 feet to a found 3/4-inch iron pipe at the Southwest corner of Lot 49, as the same is shown upon the recorded Plat of "Barnett Heights Amended", of record in Plat Book 27, Page 74;

Thence South 86 deg. 15' 31" East, with the Southerly line of said Lot 49, and the Southerly line of Lot 42, as the same is shown upon the recorded Plat of "Barnett Heights Amended", of record in Plat Book 27, Page 74, a distance of 269.26 feet to a found 3/4-inch iron pipe at the Northwest corner of said Lot 11;

Thence South 3 deg. 38' 36" West, with the Westerly line of said Lot 11, a distance of 119.83 feet, returning to the point of Beginning, and containing 0.920 acres of land, more or less, being subject to all restrictions, easements, and right-of-way of previous records.

Basis of Bearings:

The centerline of Livingston Avenue was assigned a bearing of South 86 deg. 30' East as shown on the record plat of Berwick Arms, of record in Plat Book 34, Page 79.

Tract IV:

Being located in Section 17, Township 12, Range 21, Refugee Lands, and being all of Reserve "D", as the same is shown upon the recorded Plat of "Berwick Arms", of record in Plat Book 34, Page 79, more particularly described as follows:

Beginning at a 3/4-inch iron pipe found at the Southeast corner of Lot 14, as the same is shown upon the recorded Plat of "Berwick Arms", of record in Plat Book 34, Page 79;

Thence North 33 deg. 29' 10" East, with the Easterly line of said Lot 14, a distance of 119.46 feet to a set 3/4-inch iron pipe, at the Northeast corner of said Lot 14 and in the Southerly right-of-way line of Allendale Drive, as the same is shown upon the recorded Plat of "Dedication of Rand Avenue and Allendale Drive", of record in Plat Book 32, Page 104;

Thence with a curve to the right, having a radius of 125.00 feet, an arc length of 48.10 feet, a central angle of 22 deg. 02' 54" and a chord which bears South 45 deg. 40' 01" East, a chord distance of 47.81 feet to set 3/4-inch iron pipe at a point of tangency;

Thence South 34 deg. 38' 34" East, along the Southerly right-of-way line of Allendale Drive, a distance of 113.06 feet to a set 3/4-inch iron pipe at a point of curvature;

Thence with a curve to the right, having a radius of 125.00 feet, an arc length of 9.08 feet, a central angle of 4 deg. 09' 46", and a chord which bears South 32 deg. 33' 41" East, a chord distance of 9.08 feet, to a set 3/4-inch iron pipe, at the Northeast corner of Lot 15, as the same is shown upon the recorded Plat of "Berwick Arms", of record in Plat Book 34, Page 79;

Thence South 58 deg. 52' 15" West, with the Northerly line of said Lot 15, a distance of 119.90 feet, to a set 3/4-inch iron pipe, at the Northwest corner of said Lot 15 and in the Easterly line of an 8.758 acre tract, conveyed to Colonial Village Berwick, LLC, of record in Instr. No. 200605020083518.

Thence North 34 deg. 38' 34" West, with the Easterly line of said 8.758 acre tract, a distance of 117.21 feet, returning to the point of Beginning, and containing 0.396 acres of land, more or less, being subject to all restrictions, easements, and rights-of-way of previous record.

Basis of Bearings:

The centerline of Livingston Avenue was assigned a bearing of South 86 deg. 30' East as shown on the record Plat of Berwick Arms, of record in Plat Book 34, Page 79.

Tract V (Parcel I):

Being located in Section 17, Township 12, Range 21, Refugee Lands, and being all of Lot 11, as the same is shown upon the recorded Plat of "Berwick Arms", of record in Plat Book 34, Page 79, more particularly described as follows:

Beginning at a 3/4-inch iron pipe found in the Northerly right-of-way line of Allendale Drive as the same is shown upon the recorded Plat of "Dedication of Rand Avenue and Allendale Drive", of record in Plat Book 32, Page 104 and at the Southwest corner of said Lot 11;

Thence North 3 deg. 38' 36" East, with the Westerly line of said Lot 11, a distance of 119.83 feet to a found 3/4-inch iron pipe in the Southerly line of Lot 42, as the same is shown upon the recorded Plat of "Barnett Heights Amended", of record in Plat Book 27, Page 74;

Thence South 86 deg. 15' 31" East, with the Southerly line of said Lot 42, a distance of 65.00 feet to a found 3/4-inch pinch top at the Southeast corner of said Lot 42 and being in the Westerly right-of-way line of Olney Drive;

Thence South 3 deg. 38' 36" West, with the Westerly right-of-way line of Olney Drive, a distance of 109.71 feet to a set 3/4-inch iron pipe at a point of curvature;

Thence with a curve to the right, having a radius of 10.00 feet, an arc length of 15.71 feet, a central angle of 90 deg. 00' 00" and a chord which bears South 48 deg. 38' 36" West, a chord distance of 14.14 feet to a set 3/4-inch iron pipe at a point of tangency in the Northerly right-of-way line of said Allendale Drive;

Thence North 86 deg. 21' 24" West, with the said Northerly right-of-way line of Allendale Drive, a distance of 55.00 feet, returning to the point of Beginning, and containing 0.178 acres of land, more or less, being subject to all restrictions, easements, and right-of-way, of previous records.

Basis of Bearings:

The centerline of Livingston Avenue was assigned a bearing of South 86 deg. 30' East as shown on the record Plat of Berwick Arms, of record in Plat Book 34, Page 79.

Tract V (Parcel II):

Being located in Section 17, Township 12, Range 21, Refugee Lands, and being all of Lots 1 through 10, inclusive, together with Reserve "B" and Reserve "C", as the same is shown upon the recorded Plat of "Berwick Arms", of record in Plat Book 34, Page 79, more particularly described as follows:

Beginning at a 3/4-inch pinch top found in the Easterly right-of-way line of Olney Drive and at the Southwesterly corner of Lot 41, as the same is shown upon the recorded Plat of "Barnett Heights Amended", of record in Plat Book 27, Page 74;

Thence South 86 deg. 15' 31" East, with the Southerly line of said Lot 41, and the Southerly line of a 0.616 acre tract (by survey), conveyed to Colonial Village Berwick, LLC, of record in Instr. No. 200605020083518, a distance of 323.47 feet to a set 3/4 iron pipe, in the Westerly right-of-way line of New York Central R.R.;

Thence South 34 deg. 36' 26" East, with the Westerly right-of-way line of New York Central R.R., a distance of 284.14 feet to a found 3/4 iron pipe in the Westerly right-of-way line of New York Central R.R. and at the Northwest corner of a 2.868 acre tract (by survey), conveyed to Colonial Village Berwick, LLC, of record in Instr.

No. 200701110006858;

Thence South 3 deg. 26' 36" West, with the Westerly line of said 2.868 acre tract (by survey), a distance of 694.80 feet to a set 3/4 iron pipe, at the Southwest corner of the said 2.868 acre tract, and being in the Northerly right-of-way line of Livingston Avenue;

Thence North 86 deg. 30' 00" West, along the North right-of-way line of Livingston Avenue, a distance of 125.02 feet to a set 3/4 iron pipe at a point of curvature;

Thence with a curve to the right, having a radius of 20.00 feet, an arc length of 31.40 feet, a central angle of 89 deg. 56' 36" and a chord which bears North 41 deg. 31' 42" West, a chord distance of 28.27 feet to a set 3/4 iron pipe at a point of tangency in the Easterly right-of-way line of Brookway Road;

Thence with the Easterly right-of-way line of Brookway Road the following Six (6) courses:

1) North 3 deg. 26' 36" East, a distance of 516.11 feet, to a found 5/8-inch rebar at a point of curvature;

2) Thence with a curve to the left, having a radius of 175.00 feet, an arc length of 116.33 feet, a central angle of 38 deg. 05' 10" and a chord which bears North 15 deg. 35' 59" West, a chord distance of 114.20 feet, to a found 5/8-inch rebar at a point of tangency;

3) North 34 deg. 38' 34" West, a distance of 113.06 feet, to found 5/8-inch rebar at a point of curvature;

4) Thence with a curve to the left, having a radius of 175.00 feet, an arc length of 157.95 feet, a central angle of 51 deg. 42' 50" and a chord which bears North 60 deg. 29' 59" West, a chord distance of 152.64 feet, to a set 3/4 iron pipe at a point of tangency;

5) North 86 deg. 21' 24" West, a distance of 99.89 feet, to a set 3/4 iron pipe at a point of curvature;

6) Thence with a curve to the right, having a radius of 10.00 feet, an arc length of 15.71 feet, a central angle of 90 deg. 00' 00" and a chord which bears North 41 deg. 21' 24" West, a chord distance of 14.14 feet, to a set 3/4 iron pipe at a point of tangency in the Easterly right-of-way line of Olney Drive;

Thence North 3 deg. 38' 36" East, with the said Easterly right-of-way line of Olney Drive, a distance of 109.63 feet, returning to the point of Beginning, and containing 3.978 acres of land, more or less, being subject to all restrictions, easements, and rights-of-ways of previous record.

Basis of Bearings:

The centerline of Livingston Avenue was assigned a bearing of South 86 deg. 30' East as shown on the record Plat of Berwick Arms, of record in Plat Book 34, Page 79.

Tract VI (Parcel I):

Being located in Section 17, Township 12, Range 21, Refugee Lands, and being all of Lots 12 through 14, inclusive, as the same is shown upon the recorded Plat of "Berwick Arms", of record in Plat Book 34, Page 79, more particularly described as follows:

Beginning at a 3/4 Iron pipe found in the Southerly right-of-way line of Allendale Drive and at the Northwest corner of said Lot 12;

Thence South 86 deg. 21' 24" East, with the said Southerly right-of-way line of Allendale Drive, a distance of

164.83 feet to a found 5/8 rebar at a point of curvature;

Thence with a curve to the right, having a radius of 125.00 feet, an arc length of 64.72 feet, a central angle of 29 deg. 39' 57" and a chord which bears South 71 deg. 31' 26" East, a chord distance of 64.00 feet, a set 3/4-inch iron pipe at the Northwest corner of a 0.396 acre tract, conveyed to Colonial Village Berwick, LLC, of record in Instr. No. 200605020083518;

Thence South 33 deg. 29' 10" West, with the Westerly line of said 0.396 acre tract, a distance of 119.46 feet, to a found 3/4 iron pipe, in the Easterly line of a 8.758 acre tract, conveyed to Colonial Village Berwick, LLC, of record in Instr. No. 200605020083518;

Thence North 86 deg. 21' 24" West, along the Northerly line of said 8.758 acre tract, a distance of 167.26 feet to a found 3/4 iron pipe at the Southwest corner of said Lot 12;

Thence North 3 deg. 38' 36" East, along the Westerly line of said Lot 12, a distance of 120.00 feet, returning to the point of Beginning, and containing 0.546 acres of land, more or less, being subject to all restrictions, easements, and rights-of-ways of previous record.

Basis of Bearings:

The centerline of Livingston Avenue was assigned a bearing of South 86 deg. 30' East as shown on the record Plat of Berwick Arms, of record in Plat Book 34, Page 79.

Tract VI (Parcel II):

Being located in Section 17, Township 12, Range 21, Refugee Lands, and being all of Lots 15 through 23, inclusive, as the same is shown upon the recorded Plat of "Berwick Arms", of record in Plat Book 34, Page 79, more particularly described as follows:

Beginning at a 3/4 iron pipe set in the Westerly right-of-way line of Brookway Road and at the Northeast corner of said Lot 15, and at the Southeasterly corner of a 0.396 acre tract, conveyed to Colonial Village Berwick, LLC, of record in Instr. No. 200605020083518;

Thence with the Westerly right-of-way line of said Brookway Road, the following Three (3) courses;

1) Thence with a curve to the right, having a radius of 125.00 feet, an arc length of 74.01 feet, a central angle of 33 deg. 55' 24" and a chord which bears South 13 deg. 31' 06" East, a chord distance of 72.93 feet to a found 5/8-inch rebar at a point of tangency;

2) South 3 deg. 26' 36" West, a distance of 516.03 feet to a set 3/4-inch iron pipe at a point of curvature;

3) Thence with a curve to the right, having a radius of 20.00 feet, an arc length of 31.44 feet, a central angle of 90 deg. 03' 24" and a chord which bears South 48 deg. 28' 18" West, a chord distance of 28.30 feet to set 3/4-inch iron pipe at a point of tangency, in the Northerly right-of-way line of Livingston Avenue;

Thence North 86 deg. 30' 00" West, along the North right-of-way line of Livingston Avenue, a distance of 99.98 feet to a found 3/4-inch pinch top at the Southeast corner of an 8.758 acre tract, conveyed to Colonial Village Berwick, LLC, of record in Instr. No. 200605020083518;

Thence North 3 deg. 26' 36" East, with the Easterly line of said 8.758 acre tract, a distance of 537.65 feet to a set 3/4-inch iron pipe, at the Northwest corner of said Lot 15 and at the Southwest corner of said 0.396 acre tract;

Thence North 58 deg. 52' 15" East, with the Southerly line of said 0.396 acre tract, a distance of 119.90 feet, returning to the point of Beginning, and containing 1.579 acres of land more or less, being subject to all restrictions, easements, and rights-of-ways of previous record.

Basis of Bearings:

The centerline of Livingston Avenue was assigned a bearing of South 86 deg. 30' East as shown on the record Plat of Berwick Arms, of record in Plat Book 34, Page 79.

Tract VII:

Being located in Section 17, Township 12, Range 21, Refugee Lands, and being all of Reserve "A", as the same is shown upon the recorded Plat of "Berwick Arms", of record in Plat Book 34, Page 79, more particularly described as follows:

Beginning at a 3/4-inch iron pipe set, at the Southeasterly corner of Lot 41, as the same is shown upon the recorded Plat of "Barnett Heights Amended", of record in Plat Book 27, Page 74, and in the Northerly line of a 3.978 acre tract, conveyed to Colonial Village Berwick, LLC, of record in Instr. No. 200605020083518;

Thence North 16 deg. 33' 39" West, with the Easterly line of Lots 36 through 41, inclusive, as the same is shown upon the recorded Plat of "Barnett Heights Amended", of record in Plat Book 27, Page 74, a distance of 369.86 feet to a found 3/4 iron pipe at an angle point in said Lot 36;

Thence South 83 deg. 58' 10" East, with the Easterly line of said Lot 36, a distance of 4.49 feet to a found 3/4 iron pipe in the Westerly right-of-way line of New York Central R.R.;

Thence South 34 deg. 36' 26" East, with the said Westerly right-of-way line of New York Central R.R., a distance of 442.08 feet, to a 3/4-inch iron pipe set at the Northeast corner of said 3.978 acre tract;

Thence North 86 deg. 15' 31" West, with the Northerly line of the said 3.978 acre tract, a distance of 150.44 feet, returning to the point of Beginning, and containing 0.616 acres of land, more or less, being subject to all restrictions, easements, and rights-of-way of previous record.

Basis of Bearings:

The centerline of Livingston Avenue was assigned a bearing of South 86 deg. 30' East as shown on the record Plat of Berwick Arms, of record in Plat Book 34, Page 79.

EXHIBIT "B"

LIST OF ADDRESSES AND PARCEL ID NUMBERS

A. ADDRESSES:

1300 Brookway Road, Columbus, OH 43227 and 1294 Brookway Road, Columbus, OH 43227 and 1288 Brookway Road, Columbus, OH 43227 and 1280 Brookway Road, Columbus, OH 43227 and 1272 Brookway Road, Columbus, OH 43227 and 1264 Brookway Road, Columbus, OH 43227 and 1256 Brookway Road, Columbus, OH 43227 and 1248 Brookway Road, Columbus, OH 43227 and 1240 Brookway Road, Columbus, OH 43227 and 1180 Olney Drive, Columbus, OH 43227 and 1179 Olney Drive, Columbus, OH 43227 and 3639 Allendale Drive, Columbus, OH 43227 and 3651 Allendale Drive, Columbus, OH 43227 and 3663 Allendale Drive, Columbus, OH 43227 and 1239 Brookway Road, Columbus, OH 43227 and 1247 Brookway Road, Columbus, OH 43227 and 1255 Brookway Road, Columbus, OH 43227 and 1263 Brookway Road, Columbus, OH 43227 and 1271 Brookway Road, Columbus, OH 43227 and 1279 Brookway Road, Columbus, OH 43227 and 1287 Brookway Road, Columbus, OH 43227 and 1295 Brookway Road, Columbus, OH 43227 and 1301 Brookway Road, Columbus, OH 43227 and 3668 Allendale Drive, Columbus, OH 43227 and 3666 Allendale Drive, Columbus, OH 43227 and 1228 Brookway Road, Columbus, OH 43227 and 1225 Brookway Road, Columbus, OH 43227 and 3727 Briggs Road, Columbus, OH 43228 and 1171 Rand Avenue, Columbus, OH 43227 and 3532 Rand Circle, Columbus, OH 43227 and 3557 Rand Circle, Columbus, OH 43227 and 3514 Rand Square, Columbus, OH 43227 and 1256 Rand Avenue, Columbus, OH 43227 and 1223 Berwick Arms Place, Columbus, OH 43227,

B. PARCEL ID NUMBERS:

Parcel:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34

Tax Identification Numbers:

010-134510
010-134511
010-134512
010-134513
010-134514
010-134515
010-134516
010-134517
010-134518
010-134519
010-134520
010-134521
010-134522
010-134523
010-134524
010-134525
010-134526
010-134527
010-134528
010-134529
010-134530
010-134531
010-134532
010-134533
010-134534
010-134535
010-134536
010-134570
010-137571
010-137572
010-137573
010-137574
010-137576
010-137577

**COLLATERAL ASSIGNMENT OF DOCUMENTS
AFFECTING REAL ESTATE**

THIS COLLATERAL ASSIGNMENT OF DOCUMENTS AFFECTING REAL ESTATE is made as of the ____ day of August, 2020, by APEX COLONIAL OH LLC, a Delaware limited liability company, whose address is 2365 Nostrand Avenue, Brooklyn, New York 11210 (hereinafter collectively referred to as "Assignor", which term as used herein in every instance shall include Assignor's successors, legal representatives and assigns), to EF SBC 2015-2 LLC, a Delaware limited liability company, whose address is 53 Forest Avenue, Old Greenwich, CT 06870 (hereinafter referred to as "Assignee", which term as used herein in every instance shall include Assignor's successors, legal representatives and assigns).

WITNESSETH:

WHEREAS, Assignee has agreed to make a Loan to Assignor in the amount of Fifteen Million Five Hundred Thousand and No/100 Dollars (\$15,500,000.00) (the "Loan"), pursuant to the terms of a Promissory Note from Assignor to Assignee of even date herewith (the "Note"), said Note to be secured by that certain Open-End Mortgage, Security Agreement and Fixture Filing (the "Mortgage") of even date herewith, executed by Assignor as Mortgagor in favor of Assignee as Mortgagee, to be recorded in the public records of Franklin County, Ohio, encumbering the real property more described as follows (the "Property"):

See Exhibit "A" attached hereto

WHEREAS, as an additional condition for granting of the Loan, and as additional security for the Note and the obligations of the Assignor thereunder and under the other Loan documents the Assignor has executed and delivered to the Assignee this Collateral Assignment of Documents Affecting Real Estate.

NOW, THEREFORE, in consideration of the Loan, and intending to be legally bound, Assignor does hereby covenant, agree, warrant and represent as follows:

1. The foregoing recitals are true and correct, and are incorporated in this Assignment.
2. Assignor hereby assigns, transfers, delivers and grants a security interest to the Assignee, to the extent permissible by law, in and to all of the right, title and interest of the Assignor in and to the following (collectively, the "Additional Collateral"):
 - A. All licenses, permits, refunds, approvals, certificates and agreements with or from all boards, agencies, departments, governmental or otherwise, relating directly or indirectly to the ownership, use, operation and maintenance of the Property, whether heretofore or hereafter issued or executed (collectively, the "Licenses"), said boards, agencies, departments, governmental or otherwise being hereinafter collectively referred to as "Governmental Authorities";
 - B. All contracts, agreements, easements (whether or not reciprocal), options, service agreements, management agreements, warranties, purchase orders, hotel licensing agreements, which have heretofore been or will hereinafter be executed by or on behalf of Assignor, or which have been assigned to Assignor, or to which Assignor has succeeded by virtue of its ownership or purchase of the Property, in connection with the improvement, use, operation and maintenance of the Property

(collectively, the "Contracts", and the parties with whom or to whom such Contracts have been or are given are hereinafter collectively referred to as the "Contractors").

3. So long as no Event of Default (as defined in the Note and Mortgage) or other default in the performance of Assignor's obligations shall exist which has continued beyond any applicable grace periods, the Assignor shall have the right to retain, for its own use and benefit, the rights, benefits, profits and privileges contained in or arising out of the instruments comprising the Additional Collateral, to manage and operate the Property and to collect, receive and apply for its own account the profits and benefits arising out of the Additional Collateral, and to execute and deliver proper receipts and acquittances therefor.

4. Immediately upon the occurrence of an Event of Default, the rights of Assignor to retain for its own use and benefit the rights, benefits, profits and privileges contained in the instruments comprising the Additional Collateral shall cease and terminate.

5. After the occurrence of an Event of Default, Assignee may elect to exercise any and all of Assignor's rights and remedies under the Additional Collateral, without any interference or objection from Assignor and Assignor shall cooperate in causing the parties to Contracts with Assignor to comply with all the terms and conditions of the Contracts; and if and to the extent permitted by law and the terms of the Additional Collateral, Assignee may elect, with or without entry upon the Property, at its option, to take over and enjoy the benefits of the Licenses, exercise Assignor's rights under the Additional Collateral, and perform all acts in the same manner and to the same extent as Assignor might do. In connection with any and all of the foregoing powers, and without limiting the same, Assignee may effect new Contracts, Licenses or other agreements, cancel or surrender existing Additional Collateral, alter and amend the terms of and renew existing Additional Collateral, and make concessions to governmental authorities, contractors and other parties to contracts with Assignor. Assignor hereby releases any and all claims which it has or might have against Assignee arising out of such performance by Assignee, unless as a result of Assignee's gross negligence or willful misconduct.

6. In the Event of Default by Assignor, the Assignor does hereby constitute and appoint the Assignee, irrevocably, with full power of substitution and revocation, its true and lawful attorney, for it and in its name, place and stead, to do and perform any or all of the actions which Assignor is entitled to perform in connection with the Additional Collateral, as fully, to all intents and purposes, as it could do if personally present, hereby ratifying and confirming all that its said attorney or its substitute shall lawfully do or cause to be done by virtue hereof. Any action, or failure or refusal to act, by the Assignee under this paragraph 6 shall be at its election and without any liability on its part, unless as a result of Assignee's gross negligence or willful misconduct.

7. The rights and powers of the Assignee hereunder shall continue and remain in full force and effect until all amounts secured hereby are paid in full.

8. The Assignor represents and warrants to Assignee as follows:

- A. That it has the right to execute and deliver this Assignment;
- B. That there have been no prior and outstanding assignments of the Collateral;
- C. That it will not assign, pledge or otherwise encumber the Additional Collateral unless the prior written consent of the Assignee shall have been obtained thereto;

D. That it will perform and observe, or cause to be performed and observed, all of the terms, covenants and conditions on its part to be performed and observed with respect to the Additional Collateral;

E. That it will, upon request by the Assignee, deliver such other instruments or documents as the Assignee may reasonably request at any time for the purpose of securing its rights hereunder.

F. That to the best of Assignor's knowledge, there exists no event, condition or occurrence which constitutes, or which with notice and/or the passage of time would constitute, a breach of or default under any terms or conditions of any of the instruments comprising the Additional Collateral. Assignor also hereby covenants and agrees not to do any act which would destroy or impair the security to the Assignee of this Assignment.

9. Nothing contained herein shall operate or be construed to obligate the Assignee to perform any of the terms, covenants or conditions of Assignor contained in any of the Additional Collateral.

10. Nothing herein contained shall be construed as constituting a waiver or suspension by Assignee of its right to enforce payment under the terms of the Note or any other of the Loan Documents. Assignee is not the agent, partner, or joint venturer of any other person, and nothing herein contained shall be construed to impose any liability upon the Assignee by reason of the Assignment granted hereby.

11. This Assignment may be enforced from time to time by Assignee at its discretion during the existence of an Event of Default, with or without order of any court and with or without appointment of a receiver, as Assignee shall determine, except as otherwise required by applicable law. Assignee may also at any time cease to enforce this Assignment. Any failure on the part of Assignee to promptly exercise any option hereby given or reserved shall not prevent the exercise of any such option at any time thereafter. Assignee may pursue and enforce any remedy or remedies accorded it herein independently of, in conjunction or concurrently with, or subsequent to its pursuit and enforcement of any remedy or remedies which it may have under the Note or any other of the Loan Documents.

12. When the content so requires, the singular shall include the plural and conversely, and use of any gender shall include all genders.

13. This Assignment shall be governed by and construed in accordance with the laws of the State of New York. Whenever possible, each provision of this Assignment shall be interpreted in such manner as to be effective and valid under applicable law; but if any provision of this Assignment shall be prohibited by or be invalid under any applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions or the remaining provisions of this Assignment.

14. All notices, consents, approvals, waivers, or elections ("Notices"), which any party may be required or entitled to make or give under this Assignment or any agreement to be executed in connection herewith shall be in writing and shall be sufficient if made or given by personal delivery, nationally recognized courier service, prepaid telegram, telex or telecopier, or United States certified or registered mail, return-receipt requested, postage prepaid, addressed as follows (unless otherwise expressly provided in writing):

TO ASSIGNOR:

APEX COLONIAL OH LLC
2365 Nostrand Avenue
Brooklyn, NY 11210

TO ASSIGNEE: EF SBC 2015-2 LLC
53 Forest Avenue
Old Greenwich, CT 06870

or to such other address specified in writing by one party to the other in accordance herewith.

All Notices given in accordance with the terms of this section shall be deemed received when delivered personally (personal delivery to include delivery by a nationally recognized courier service), when sent and confirmed by prepaid telegram, telex or telecopier, or when deposited in the official depository under the regular care and custody of the United States Mail, addressed as specified above, sent by certified or registered mail, return receipt requested, with postage prepaid. The time period in which a response of any mailed Notice must be given shall commence to run from the date of receipt on the return receipt of the Notice by the addressee. Rejection or other refusal to accept or the inability to deliver because of change in address of which no Notice was given shall be deemed to be receipt of the Notice. Either party may change the address for receiving Notices by not less than ten (10) days prior Notice sent in accordance with the terms of this section.

15. Unless otherwise defined herein, terms are used herein with the same meanings as defined in the Loan Documents. In the event of any conflict between the terms hereof and the Note, the terms of the Note shall control.


16. Upon payment in full of all the indebtedness secured by the Mortgage, as evidenced by a recorded satisfaction or release of the Mortgage, as well as any sums which may be payable hereunder, this Assignment shall become and be void and of no further effect.

[EXECUTION PAGE TO FOLLOW]

IN WITNESS WHEREOF, the Assignor has executed this instrument as of the day and year first above written.

ASSIGNOR:

APEX COLONIAL OH LLC, a Delaware limited liability company

By: 
Name: Oron Zarum
Title: Authorized Signatory

STATE OF NJ)
COUNTY OF DELA) SS:

The foregoing instrument was acknowledged before me this 26th day of August, 2020, by Oron Zarum, as Authorized Signatory of Apex Colonial OH LLC, a Delaware limited liability company, who personally is known to me or has produced a NJ Driver License as identification, and took an oath.

Yehudis S. Zarum
Notary Public
State of New Jersey
My Commission Expires August 15, 2021



NOTARY PUBLIC
Print Name: Yehudis Zarum
My Commission Expires: 8/15/2021

Exhibit "A"

All that certain lot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the City of Columbus, County of Franklin, State of Ohio.

Tract I:

Being located in Section 17, Township 12, Range 21, Refugee Lands, more particularly described as follows:

Beginning at a 3/4-inch iron pipe found in the Western right-of-way line of Rand Avenue and at the Southeastern corner of Lot 50 as the same is shown upon the recorded Plat of "Barnett Heights Amended", of record in Plat Book 27, Page 74;

Thence with the Westerly right-of-way line of Rand Avenue, as the same is shown upon the recorded Plat of "Dedication of Rand Avenue and Allendale Drive", of record in Plat Book 32, Page 104, the following Eight (8) courses:

- 1) South 3 deg. 32' 06" West, a distance of 120.35 feet to a found 5/8-inch rebar (bent);
- 2) South 14 deg. 21' 51" West, a distance of 28.66 feet to a set 3/4-inch iron pipe;
- 3) South 3 deg. 53' 06" West, a distance of 404.97 feet to found 5/8-inch rebar at a point of curvature;
- 4) Thence with a curve to the left, having a radius of 230.00 feet, an arc length of 100.42 feet, a central angle of 25 deg. 00' 53" and a chord which bears South 8 deg. 33' 59" East, a chord distance of 99.62 feet to a set 3/4-inch iron pipe at the point of reverse curvature;
- 5) Thence with a curve to the right, having a radius of 170.00 feet, an arc length of 72.74 feet, a central angle of 24 deg. 31' 02" and a chord which bears South 8 deg. 48' 55" East, a chord distance of 72.19 feet to a found 5/8-inch rebar at the point of tangency;
- 6) South 3 deg. 26' 36" West, a distance of 55.00 feet to a found 5/8-inch rebar;
- 7) South 13 deg. 26' 41" West, a distance of 28.79 feet to a found 5/8-inch rebar;
- 8) South 3 deg. 26' 36" West, a distance of 116.81 feet to a found 3/4-inch iron pipe at the intersection of the Westerly right-of-way line of said Rand Avenue and the Northerly right-of-way line of Livingston Avenue;

Thence North 86 deg. 30' 00" West, along the North right-of-way line of Livingston Avenue, a distance of 437.31 feet to a found 3/4-inch pinch top at the Southeast corner of a 0.792 acre tract, conveyed to Katja R. Turner, of record in Instr. No. 200507080134653;

Thence North 3 deg. 17' 48" East, with the Easterly line of said 0.792 acre tract, and the Easterly line of a 1.95 acre tract, conveyed to City of Columbus, Ohio, of record in D.B. 2452, Page 511, and the Easterly line of a 3.405 acre tract, conveyed to City of Columbus, Ohio, of record in Instr. No. 200602100027249, a distance of 821.60 feet to a set 3/4 iron pipe in the Southerly line of a 0.364 acre tract, conveyed to Patricia A. Johnson, of record in O.R. 14527 H09;

Thence South 86 deg. 44' 14" East, with the Southerly line of said 0.364 acre tract, and the Southerly line of a 0.364 acre tract, conveyed to Anena Moore, of record in O.R. 07763 B16, and the Southerly line of a 0.343 acre tract, conveyed to Robert E. & Veronica J. Owens, of record in O.R. 09708 J01, and the Southerly line of a 0.364 acre tract, conveyed to Charlene Peachey & Geraldine Peachey Allen, of record in Instr. No. 200506160116684, and the Southerly line of a 0.130 acre tract, conveyed to Victoria L. Jones, of record in Instr. No. 200001070005865, a distance of 265.03 feet to a found 5/8-inch rebar at the South Easterly corner of said 0.130 acre tract;

Thence North 4 deg. 08' 56" East, with the Easterly line of said 0.130 acre tract, a distance of 99.52 feet to a found 5/8-inch rebar in the Easterly line of said 0.130 acre tract, and at the Southwest corner of said Lot 50 as the same is shown upon the recorded Plat of "Barnett Heights Amended", of record in Plat Book 32, Page 104;

Thence South 86 deg. 15' 31" East, with the Southerly line of said Lot 50, a distance of 150.85 feet, returning to the point of Beginnings, and containing 8.272 acres of land more or less, being subject to all restrictions, easements, and rights-of-way of previous record.

Basis of Bearings:

The centerline of Livingston Avenue was assigned a bearing of South 86 deg. 30' East as shown on the record plat of Berwick Arms, of record in Plat Book 34, Page 79.

Tract II:

Being located in Section 17, Township 12, Range 21, Refugee Lands, more particularly described as follows:

Beginning at a 3/4-inch iron pipe found in the Southerly right-of-way line of Allendale Drive and at the Northwest corner of Lot 12, as the same is shown upon the recorded Plat of "Berwick Arms", of record in Plat Book 34, Page 79;

Thence South 3 deg. 38' 36" West, with the Westerly line of said Lot 12, a distance of 120.00 feet to a found 3/4-inch iron pipe;

Thence South 86 deg. 21' 24" East, with the Southerly line of said Lot 12 and the Southerly line of Lot 13 and Lot 14, as the same is shown upon the recorded plat of "Berwick Arms", of record in Plat Book 34, Page 79, a distance of 167.26 feet to a found 3/4-inch iron pipe at the Southwesterly corner of Reserve "D" a 0.396 acre tract, (by survey), conveyed to Colonial Village Berwick, LLC, of record in Instr. No. 200605020083518;

Thence South 34 deg. 38' 34" East, with the Southerly line of said 0.396 acre tract, a distance of 117.21 feet to a set 3/4 iron pipe at the Northwesterly corner of Lot 15, as the same is shown upon the recorded Plat of "Berwick Arms", of record in Plat Book 34;

Thence South 3 deg. 26' 36" West, with the Westerly line of Lots 15 through 23, inclusive, as the same is shown upon the recorded Plat of "Berwick Arms", of record in Plat Book 34, Page 79, a distance of 537.65 feet to a found 3/4-inch pinch top at the Southwest corner of said Lot 23, and in the Northerly right-of-way line of Livingston Avenue;

Thence North 86 deg. 30' 00" West, along the North right-of-way line of Livingston Avenue, a distance of 525.55 feet to a found 3/4-inch iron pipe at the intersection of the North right-of-way of Livingston Avenue and the East right-of-way line of Rand Avenue;

Thence with the Easterly right-of-way line of Rand Avenue, as the same is shown upon the recorded Plat of "Dedication of Rand Avenue and Allendale Drive", of record in Plat Book 32, Page 104, the following Six (6)

courses:

- 1) North 3 deg. 26' 36" East, a distance of 116.88 feet to a found 5/8-inch rebar;
 - 2) North 6 deg. 33' 29" West, a distance of 28.79 feet to a found 5/8-inch rebar;
 - 3) North 3 deg. 26' 36" East, a distance of 55.00 feet to a set 3/4-inch iron pipe at a point of curvature;
 - 4) Thence with a curve to the left, having a radius of 230.00 feet, an arc length of 98.42 feet, a central angle of 24 deg. 31' 02" and a chord which bears North 8 deg. 48' 55" West, a chord distance of 97.67 feet to a found 5/8-inch rebar iron pin at a point of reverse curvature;
 - 5) Thence with a curve to the right, having a radius of 170.00 feet, an arc length of 73.86 feet, a central angle of 24 deg. 53' 37" and a chord which bears North 8 deg. 37' 37" West, a chord distance of 73.28 feet to a set 3/4-inch iron pipe at the point of tangency;
 - 6) North 3 deg. 53' 06" East, a distance of 373.82 feet to a found 5/8-inch rebar at a point of curvature;
- Thence with a curve to the right, having a radius of 10.00 feet, an arc length of 15.67 feet, a central angle of 89 deg. 45' 30" and a chord which bears North 48 deg. 45' 51" East, a chord distance of 14.11 feet, to a found 5/8-inch rebar, at the point of tangency and being in the Southerly right-of-way of said Allendale Drive;
- Thence South 86 deg. 21' 24" East, along the Southerly right-of-way line of Allendale Drive, a distance of 314.56 feet, returning to the point of Beginnings, and containing 8.758 acres of land more or less, being subject to all restrictions, easements, and right-of-way of previous record.

Basis of Bearings:

The centerline of Livingston Avenue was assigned a bearing of South 86 deg. 30' East as shown on the record Plat of Berwick Arms, of record in Plat Book 34, Page 79.

Tract III:

Being located in Section 17, Township 12, Range 21, Refugee Lands, more particularly described as follows:

Beginning at a 3/4-inch iron pipe found in the Northerly right-of-way line of Allendale Drive and at the Southwest corner of Lot 11, as the same is shown upon the recorded Plat of "Berwick Arms", of record in Plat Book 34, Page 79;

Thence North 86 deg. 21' 24" West, with the Northerly right-of-way line of Allendale Drive as the same is shown upon the recorded Plat of "Dedication of Rand Avenue and Allendale Drive", of record in Plat Book 32, Page 104, a distance of 259.05 feet to a found 5/8-inch rebar at a point of curvature;

Thence with a curve to the right, having a radius of 10.00 feet, an arc length of 15.69 feet, a central angle of 89 deg. 53' 30" and a chord which bears North 41 deg. 24' 39" West, a chord distance of 14.13 feet to a found 5/8-inch rebar, at the point of tangency and being in the Easterly right-of-way of said Rand Avenue, as the same is shown upon the recorded Plat of "Dedication of Rand Avenue and Allendale Drive", of record in Plat Book 32, Page 104;

Thence North 3 deg. 32' 06" East, along the Easterly right-of-way line of said Rand Avenue, a distance of 110.31 feet to a found 3/4-inch iron pipe at the Southwest corner of Lot 49, as the same is shown upon the recorded Plat of "Barnett Heights Amended", of record in Plat Book 27, Page 74;

Thence South 86 deg. 15' 31" East, with the Southerly line of said Lot 49, and the Southerly line of Lot 42, as the same is shown upon the recorded Plat of "Barnett Heights Amended", of record in Plat Book 27, Page 74, a distance of 269.26 feet to a found 3/4-inch iron pipe at the Northwest corner of said Lot 11;

Thence South 3 deg. 38' 36" West, with the Westerly line of said Lot 11, a distance of 119.83 feet, returning to the point of Beginning, and containing 0.920 acres of land, more or less, being subject to all restrictions, easements, and right-of-way of previous records.

Basis of Bearings:

The centerline of Livingston Avenue was assigned a bearing of South 86 deg. 30' East as shown on the record plat of Berwick Arms, of record in Plat Book 34, Page 79.

Tract IV:

Being located in Section 17, Township 12, Range 21, Refugee Lands, and being all of Reserve "D", as the same is shown upon the recorded Plat of "Berwick Arms", of record in Plat Book 34, Page 79, more particularly described as follows:

Beginning at a 3/4-inch iron pipe found at the Southeast corner of Lot 14, as the same is shown upon the recorded Plat of "Berwick Arms", of record in Plat Book 34, Page 79;

Thence North 33 deg. 29' 10" East, with the Easterly line of said Lot 14, a distance of 119.46 feet to a set 3/4-inch iron pipe, at the Northeast corner of said Lot 14 and in the Southerly right-of-way line of Allendale Drive, as the same is shown upon the recorded Plat of "Dedication of Rand Avenue and Allendale Drive", of record in Plat Book 32, Page 104;

Thence with a curve to the right, having a radius of 125.00 feet, an arc length of 48.10 feet, a central angle of 22 deg. 02' 54" and a chord which bears South 45 deg. 40' 01" East, a chord distance of 47.81 feet to set 3/4-inch iron pipe at a point of tangency;

Thence South 34 deg. 38' 34" East, along the Southerly right-of-way line of Allendale Drive, a distance of 113.06 feet to a set 3/4-inch iron pipe at a point of curvature;

Thence with a curve to the right, having a radius of 125.00 feet, an arc length of 9.08 feet, a central angle of 4 deg. 09' 46", and a chord which bears South 32 deg. 33' 41" East, a chord distance of 9.08 feet, to a set 3/4-inch iron pipe, at the Northeast corner of Lot 15, as the same is shown upon the recorded Plat of "Berwick Arms", of record in Plat Book 34, Page 79;

Thence South 58 deg. 52' 15" West, with the Northerly line of said Lot 15, a distance of 119.90 feet, to a set 3/4-inch iron pipe, at the Northwest corner of said Lot 15 and in the Easterly line of an 8.758 acre tract, conveyed to Colonial Village Berwick, LLC, of record in Instr. No. 200605020083518.

Thence North 34 deg. 38' 34" West, with the Easterly line of said 8.758 acre tract, a distance of 117.21 feet, returning to the point of Beginning, and containing 0.396 acres of land, more or less, being subject to all restrictions, easements, and rights-of-way of previous record.

Basis of Bearings:

The centerline of Livingston Avenue was assigned a bearing of South 86 deg. 30' East as shown on the record Plat of Berwick Arms, of record in Plat Book 34, Page 79.

Tract V (Parcel I):

Being located in Section 17, Township 12, Range 21, Refugee Lands, and being all of Lot 11, as the same is shown upon the recorded Plat of "Berwick Arms", of record in Plat Book 34, Page 79, more particularly described as follows:

Beginning at a 3/4-inch iron pipe found in the Northerly right-of-way line of Allendale Drive as the same is shown upon the recorded Plat of "Dedication of Rand Avenue and Allendale Drive", of record in Plat Book 32, Page 104 and at the Southwest corner of said Lot 11;

Thence North 3 deg. 38' 36" East, with the Westerly line of said Lot 11, a distance of 119.83 feet to a found 3/4-inch iron pipe in the Southerly line of Lot 42, as the same is shown upon the recorded Plat of "Barnett Heights Amended", of record in Plat Book 27, Page 74;

Thence South 86 deg. 15' 31" East, with the Southerly line of said Lot 42, a distance of 65.00 feet to a found 3/4-inch pinch top at the Southeast corner of said Lot 42 and being in the Westerly right-of-way line of Olney Drive;

Thence South 3 deg. 38' 36" West, with the Westerly right-of-way line of Olney Drive, a distance of 109.71 feet to a set 3/4-inch iron pipe at a point of curvature;

Thence with a curve to the right, having a radius of 10.00 feet, an arc length of 15.71 feet, a central angle of 90 deg. 00' 00" and a chord which bears South 48 deg. 38' 36" West, a chord distance of 14.14 feet to a set 3/4-inch iron pipe at a point of tangency in the Northerly right-of-way line of said Allendale Drive;

Thence North 86 deg. 21' 24" West, with the said Northerly right-of-way line of Allendale Drive, a distance of 55.00 feet, returning to the point of Beginning, and containing 0.178 acres of land, more or less, being subject to all restrictions, easements, and right-of-way, of previous records.

Basis of Bearings:

The centerline of Livingston Avenue was assigned a bearing of South 86 deg. 30' East as shown on the record Plat of Berwick Arms, of record in Plat Book 34, Page 79.

Tract V (Parcel II):

Being located in Section 17, Township 12, Range 21, Refugee Lands, and being all of Lots 1 through 10, inclusive, together with Reserve "B" and Reserve "C", as the same is shown upon the recorded Plat of "Berwick Arms", of record in Plat Book 34, Page 79, more particularly described as follows:

Beginning at a 3/4-inch pinch top found in the Easterly right-of-way line of Olney Drive and at the Southwesterly corner of Lot 41, as the same is shown upon the recorded Plat of "Barnett Heights Amended", of record in Plat Book 27, Page 74;

Thence South 86 deg. 15' 31" East, with the Southerly line of said Lot 41, and the Southerly line of a 0.616 acre tract (by survey), conveyed to Colonial Village Berwick, LLC, of record in Instr. No. 200605020083518, a distance of 323.47 feet to a set 3/4 iron pipe, in the Westerly right-of-way line of New York Central R.R.;

Thence South 34 deg. 36' 26" East, with the Westerly right-of-way line of New York Central R.R., a distance of 284.14 feet to a found 3/4 iron pipe in the Westerly right-of-way line of New York Central R.R. and at the Northwest corner of a 2.868 acre tract (by survey), conveyed to Colonial Village Berwick, LLC, of record in Instr.

No. 200701110006858;

Thence South 3 deg. 26' 36" West, with the Westerly line of said 2.868 acre tract (by survey), a distance of 694.80 feet to a set 3/4 iron pipe, at the Southwest corner of the said 2.868 acre tract, and being in the Northerly right-of-way line of Livingston Avenue;

Thence North 86 deg. 30' 00" West, along the North right-of-way line of Livingston Avenue, a distance of 125.02 feet to a set 3/4 iron pipe at a point of curvature;

Thence with a curve to the right, having a radius of 20.00 feet, an arc length of 31.40 feet, a central angle of 89 deg. 56' 36" and a chord which bears North 41 deg. 31' 42" West, a chord distance of 28.27 feet to a set 3/4 iron pipe at a point of tangency in the Easterly right-of-way line of Brookway Road;

Thence with the Easterly right-of-way line of Brookway Road the following Six (6) courses:

1) North 3 deg. 26' 36" East, a distance of 516.11 feet, to a found 5/8-inch rebar at a point of curvature;

2) Thence with a curve to the left, having a radius of 175.00 feet, an arc length of 116.33 feet, a central angle of 38 deg. 05' 10" and a chord which bears North 15 deg. 35' 58" West, a chord distance of 114.20 feet, to a found 5/8-inch rebar at a point of tangency;

3) North 34 deg. 38' 34" West, a distance of 113.06 feet, to found 5/8-inch rebar at a point of curvature;

4) Thence with a curve to the left, having a radius of 175.00 feet, an arc length of 157.95 feet, a central angle of 51 deg. 42' 50" and a chord which bears North 60 deg. 29' 59" West, a chord distance of 152.64 feet, to a set 3/4 iron pipe at a point of tangency;

5) North 86 deg. 21' 24" West, a distance of 99.89 feet, to a set 3/4 iron pipe at a point of curvature;

6) Thence with a curve to the right, having a radius of 10.00 feet, an arc length of 15.71 feet, a central angle of 90 deg. 00' 00" and a chord which bears North 41 deg. 21' 24" West, a chord distance of 14.14 feet, to a set 3/4 iron pipe at a point of tangency in the Easterly right-of-way line of Olney Drive;

Thence North 3 deg. 38' 36" East, with the said Easterly right-of-way line of Olney Drive, a distance of 109.63 feet, returning to the point of Beginning, and containing 3.978 acres of land, more or less, being subject to all restrictions, easements, and rights-of-ways of previous record.

Basis of Bearings:

The centerline of Livingston Avenue was assigned a bearing of South 86 deg. 30' East as shown on the record Plat of Berwick Arms, of record in Plat Book 34, Page 79.

Tract VI (Parcel I):

Being located in Section 17, Township 12, Range 21, Refugee Lands, and being all of Lots 12 through 14, inclusive, as the same is shown upon the recorded Plat of "Berwick Arms", of record in Plat Book 34, Page 79, more particularly described as follows:

Beginning at a 3/4 iron pipe found in the Southerly right-of-way line of Allendale Drive and at the Northwest corner of said Lot 12;

Thence South 86 deg. 21' 24" East, with the said Southerly right-of-way line of Allendale Drive, a distance of

164.83 feet to a found 5/8 rebar at a point of curvature;

Thence with a curve to the right, having a radius of 125.00 feet, an arc length of 64.72 feet, a central angle of 29 deg. 39' 57" and a chord which bears South 71 deg. 31' 26" East, a chord distance of 64.00 feet, a set 3/4-inch iron pipe at the Northwest corner of a 0.396 acre tract, conveyed to Colonial Village Berwick, LLC, of record in Instr. No. 200605020083518;

Thence South 33 deg. 29' 10" West, with the Westerly line of said 0.396 acre tract, a distance of 119.46 feet, to a found 3/4 iron pipe, in the Easterly line of a 8.758 acre tract, conveyed to Colonial Village Berwick, LLC, of record in Instr. No. 200605020083518;

Thence North 86 deg. 21' 24" West, along the Northerly line of said 8.758 acre tract, a distance of 167.26 feet to a found 3/4 iron pipe at the Southwest corner of said Lot 12;

Thence North 3 deg. 38' 36" East, along the Westerly line of said Lot 12, a distance of 120.00 feet, returning to the point of Beginning, and containing 0.546 acres of land, more or less, being subject to all restrictions, easements, and rights-of-ways of previous record.

Basis of Bearings:

The centerline of Livingston Avenue was assigned a bearing of South 86 deg. 30' East as shown on the record Plat of Berwick Arms, of record in Plat Book 34, Page 79.

Tract VI (Parcel II):

Being located in Section 17, Township 12, Range 21, Refugee Lands, and being all of Lots 15 through 23, inclusive, as the same is shown upon the recorded Plat of "Berwick Arms", of record in Plat Book 34, Page 79, more particularly described as follows:

Beginning at a 3/4 iron pipe set in the Westerly right-of-way line of Brookway Road and at the Northeast corner of said Lot 15, and at the Southeasterly corner of a 0.396 acre tract, conveyed to Colonial Village Berwick, LLC, of record in Instr. No. 200605020083518;

Thence with the Westerly right-of-way line of said Brookway Road, the following Three (3) courses;

1) Thence with a curve to the right, having a radius of 125.00 feet, an arc length of 74.01 feet, a central angle of 33 deg. 55' 24" and a chord which bears South 13 deg. 31' 06" East, a chord distance of 72.93 feet to a found 5/8-inch rebar at a point of tangency;

2) South 3 deg. 26' 36" West, a distance of 516.03 feet to a set 3/4-inch Iron pipe at a point of curvature;

3) Thence with a curve to the right, having a radius of 20.00 feet, an arc length of 31.44 feet, a central angle of 90 deg. 03' 24" and a chord which bears South 48 deg. 28' 18" West, a chord distance of 28.30 feet to set 3/4-inch iron pipe at a point of tangency, in the Northerly right-of-way line of Livingston Avenue;

Thence North 86 deg. 30' 00" West, along the North right-of-way line of Livingston Avenue, a distance of 99.98 feet to a found 3/4-inch pinch top at the Southeast corner of an 8.758 acre tract, conveyed to Colonial Village Berwick, LLC, of record in Instr. No. 200605020083518;

Thence North 3 deg. 26' 36" East, with the Easterly line of said 8.758 acre tract, a distance of 537.65 feet to a set 3/4-inch iron pipe, at the Northwest corner of said Lot 15 and at the Southwest corner of said 0.396 acre tract;

Thence North 58 deg. 52' 15" East, with the Southerly line of said 0.396 acre tract, a distance of 119.90 feet, returning to the point of Beginning, and containing 1.579 acres of land more or less, being subject to all restrictions, easements, and rights-of-ways of previous record.

Basis of Bearings:

The centerline of Livingston Avenue was assigned a bearing of South 86 deg. 30' East as shown on the record Plat of Berwick Arms, of record in Plat Book 34, Page 79.

Tract VII:

Being located in Section 17, Township 12, Range 21, Refugee Lands, and being all of Reserve "A", as the same is shown upon the recorded Plat of "Berwick Arms", of record in Plat Book 34, Page 79, more particularly described as follows:

Beginning at a 3/4-inch iron pipe set, at the Southeasterly corner of Lot 41, as the same is shown upon the recorded Plat of "Barnett Heights Amended", of record in Plat Book 27, Page 74, and in the Northerly line of a 3.978 acre tract, conveyed to Colonial Village Berwick, LLC, of record in Instr. No. 200605020083518;

Thence North 16 deg. 33' 39" West, with the Easterly line of Lots 36 through 41, inclusive, as the same is shown upon the recorded Plat of "Barnett Heights Amended", of record in Plat Book 27, Page 74, a distance of 369.86 feet to a found 3/4 iron pipe at an angle point in said Lot 36;

Thence South 83 deg. 58' 10" East, with the Easterly line of said Lot 36, a distance of 4.49 feet to a found 3/4 iron pipe in the Westerly right-of-way line of New York Central R.R.;

Thence South 34 deg. 36' 26" East, with the said Westerly right-of-way line of New York Central R.R., a distance of 442.08 feet, to a 3/4-inch iron pipe set at the Northeast corner of said 3.978 acre tract;

Thence North 86 deg. 15' 31" West, with the Northerly line of the said 3.978 acre tract, a distance of 150.44 feet, returning to the point of Beginning, and containing 0.616 acres of land, more or less, being subject to all restrictions, easements, and rights-of-way of previous record.

Basis of Bearings:

The centerline of Livingston Avenue was assigned a bearing of South 86 deg. 30' East as shown on the record Plat of Berwick Arms, of record in Plat Book 34, Page 79.

UCC FINANCING STATEMENT**FOLLOW INSTRUCTIONS**

A. NAME & PHONE OF CONTACT AT FILER [optional] Anthony Kang (305) 428-4515
B. E-MAIL CONTACT AT FILER [optional] ANTHONY.KANG@SAUL.COM
C. SEND ACKNOWLEDGMENT TO: (Name and Address) Anthony Kang Saul Ewing Arnstein & Lehr LLP 701 Brickell Avenue, 17th Floor Miami, FL 33131

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S NAME – Provide only one Debtor name (1 a or 1b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 1b, leave all of item 1 blank, check here ☐ and provide the Individual Debtor information in Item 10 of the Financing Statement Addendum (Form UCC1Ad)

1a. ORGANIZATION'S NAME OR APEX COLONIAL OH LLC				
1b. INDIVIDUAL'S LAST NAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
1c. MAILING ADDRESS 2365 NOSTRAND AVENUE	CITY BROOKLYN	STATE NY	POSTAL CODE 11210	COUNTRY USA

2. DEBTOR'S NAME – Provide only one Debtor name (2a or 2b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 2b, leave all of item 2 blank, check here ☐ and provide the Individual Debtor information in Item 10 of the Financing Statement Addendum (Form UCC1Ad)

2a. ORGANIZATION'S NAME OR				
2b. INDIVIDUAL'S LAST NAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
2c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY

3. SECURED PARTY'S NAME (or NAME of ASSIGNEE of ASSIGNOR SECURED PARTY) – Provide only one Secured Party name (3a or 3b)

3a. ORGANIZATION'S NAME OR EF SBC 2015-2 LLC, a Delaware limited liability company				
3b. INDIVIDUAL'S LAST NAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX
3c. MAILING ADDRESS 53 Forest Avenue	CITY Old Greenwich	STATE CT	POSTAL CODE 06870	COUNTRY USA

4. COLLATERAL: This financing statement covers the following collateral:

All collateral described on Exhibit "A" attached hereto and made a part hereof.

5. Check <u>only</u> if applicable and check <u>only</u> one box: Collateral is <input type="checkbox"/> held in a Trust (see UCC1Ad, Item 17 and instructions) <input type="checkbox"/> being administered by a decedent's Personal Representative	
6a. Check <u>only</u> if applicable and check <u>only</u> one box: <input type="checkbox"/> Public-Finance Transaction <input type="checkbox"/> Manufactured-Home Transaction <input type="checkbox"/> A Debtor is a Transmitting Utility	6b. Check <u>only</u> if applicable and check <u>only</u> one box: <input type="checkbox"/> Agricultural Lien <input type="checkbox"/> Non-UCC Filing
7. ALTERNATIVE DESIGNATION (if applicable): <input type="checkbox"/> Lessee/Lessor <input type="checkbox"/> Consignee/Consignor <input type="checkbox"/> Seller/Buyer <input type="checkbox"/> Bailee/Bailor <input type="checkbox"/> Licensee/Licensor	
8. OPTIONAL FILER REFERENCE DATA	

FILING OFFICE COPY – UCC FINANCING STATEMENT (FORM UCC1) (Rev. 04/20/11)

International Association of Commercial Administrators (IACA)

EXHIBIT "A"

Rider to Financing Statement

Exhibit A to UCC from APEX COLONIAL OH LLC, a Delaware limited liability company (the "Debtor") and for the benefit of EF SBC 2015-2 LLC, a Delaware limited liability company, its successors and assigns ("Secured Party").

This Financing Statement covers the following types and items of property:

All that certain property and all buildings and all other improvements now thereon or hereafter constructed thereon situated in the County of Franklin, State of Ohio, described in Schedule "A" attached hereto and made a part hereof by reference (the "Premises");

TOGETHER WITH all of the following which, with the Premises, are herein collectively called the "Mortgaged Property":

- (a) All appurtenances and all estate and rights of Debtor in and to the Premises;
- (b) All water and water rights, ditch and ditch rights, reservoir and reservoir rights, stock or interests in irrigation or ditch companies, royalties, minerals, oil and gas rights, lease or leasehold interests owned by Debtor, now or hereafter used or useful in connection with, appurtenant to or related to the Premises;
- (c) All right, title and interest of Debtor in and to all streets, roads and public places, opened or proposed, and all easements and rights of way, public or private, now or hereafter used in connection with the Premises;
- (d) All improvements, fixtures, equipment, furniture and other articles of personal property, and all rights therein, now owned or hereafter acquired by Debtor and affixed to, placed upon or used in connection with the Premises, and all replacements thereof and substitutions therefor; and
- (e) All awards, payments or other amounts, including interest thereon, which may be made with respect to the Mortgaged Property as a result of injury to or decrease in the value of the Mortgaged Property or as a result of the exercise of the power of condemnation or eminent domain.
- (f) All rights to the rents, issues and profits of the Mortgaged Property as well as the fees, charges, accounts, or other payments for the use or occupancy of rooms and other public facilities (provided, however, that the Debtor shall be entitled to the collect and retain the above until a default has occurred as defined in the mortgage secured by the Premises).

SCHEDULE "A"
LEGAL DESCRIPTION

All that certain lot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the City of Columbus, County of Franklin, State of Ohio.

Tract I:

Being located in Section 17, Township 12, Range 21, Refugee Lands, more particularly described as follows:

Beginning at a 3/4-inch iron pipe found in the Western right-of-way line of Rand Avenue and at the Southeastern corner of Lot 50 as the same is shown upon the recorded Plat of "Barnett Heights Amended", of record in Plat Book 27, Page 74;

Thence with the Westerly right-of-way line of Rand Avenue, as the same is shown upon the recorded Plat of "Dedication of Rand Avenue and Allendale Drive", of record in Plat Book 32, Page 104, the following Eight (8) courses:

- 1) South 3 deg. 32' 06" West, a distance of 120.35 feet to a found 5/8-inch rebar (bent);
- 2) South 14 deg. 21' 51" West, a distance of 28.66 feet to a set 3/4-inch iron pipe;
- 3) South 3 deg. 53' 06" West, a distance of 404.97 feet to found 5/8-inch rebar at a point of curvature;
- 4) Thence with a curve to the left, having a radius of 230.00 feet, an arc length of 100.42 feet, a central angle of 25 deg. 00' 53" and a chord which bears South 8 deg. 33' 59" East, a chord distance of 99.62 feet to a set 3/4-inch iron pipe at the point of reverse curvature;
- 5) Thence with a curve to the right, having a radius of 170.00 feet, an arc length of 72.74 feet, a central angle of 24 deg. 31' 02" and a chord which bears South 8 deg. 48' 55" East, a chord distance of 72.19 feet to a found 5/8-inch rebar at the point of tangency;
- 6) South 3 deg. 26' 36" West, a distance of 55.00 feet to a found 5/8-inch rebar;
- 7) South 13 deg. 26' 41" West, a distance of 28.79 feet to a found 5/8-inch rebar;
- 8) South 3 deg. 26' 36" West, a distance of 116.81 feet to a found 3/4-inch iron pipe at the intersection of the Westerly right-of-way line of said Rand Avenue and the Northerly right-of-way line of Livingston Avenue;

Thence North 86 deg. 30' 00" West, along the North right-of-way line of Livingston Avenue, a distance of 437.31 feet to a found 3/4-inch pinch top at the Southeast corner of a 0.792 acre tract, conveyed to Katja R. Turner, of record in Instr. No. 200507080134653;

Thence North 3 deg. 17' 48" East, with the Easterly line of said 0.792 acre tract, and the Easterly line of a 1.95 acre tract, conveyed to City of Columbus, Ohio, of record in D.B. 2452, Page 511, and the Easterly line of a 3.405 acre tract, conveyed to City of Columbus, Ohio, of record in Instr. No. 200602100027249, a distance of 821.60 feet to a set 3/4 iron pipe in the Southerly line of a 0.364 acre tract, conveyed to Patricia A. Johnson, of record in O.R. 14527 H09;

Thence South 86 deg. 44' 14" East, with the Southerly line of said 0.364 acre tract, and the Southerly line of a 0.364 acre tract, conveyed to Anena Moore, of record in O.R. 07763 B16, and the Southerly line of a 0.343 acre tract, conveyed to Robert E. & Veronica J. Owens, of record in O.R. 09708 J01, and the Southerly line of a 0.364 acre tract, conveyed to Charlene Peachey & Geraldine Peachey Allen, of record in Instr. No. 200506160116684, and the Southerly line of a 0.130 acre tract, conveyed to Victoria L. Jones, of record in Instr. No. 200001070005865, a distance of 265.03 feet to a found 5/8-inch rebar at the South Easterly corner of said 0.130 acre tract;

Thence North 4 deg. 08' 56" East, with the Easterly line of said 0.130 acre tract, a distance of 99.52 feet to a found 5/8-inch rebar in the Easterly line of said 0.130 acre tract, and at the Southwest corner of said Lot 50 as the same is shown upon the recorded Plat of "Barnett Heights Amended", of record in Plat Book 32, Page 104;

Thence South 86 deg. 15' 31" East, with the Southerly line of said Lot 50, a distance of 150.85 feet, returning to the point of Beginnings, and containing 8.272 acres of land more or less, being subject to all restrictions, easements, and rights-of-way of previous record.

Basis of Bearings:

The centerline of Livingston Avenue was assigned a bearing of South 86 deg. 30' East as shown on the record plat of Berwick Arms, of record in Plat Book 34, Page 79.

Tract II:

Being located in Section 17, Township 12, Range 21, Refugee Lands, more particularly described as follows:

Beginning at a 3/4-inch iron pipe found in the Southerly right-of-way line of Allendale Drive and at the Northwest corner of Lot 12, as the same is shown upon the recorded Plat of "Berwick Arms", of record in Plat Book 34, Page 79;

Thence South 3 deg. 38' 36" West, with the Westerly line of said Lot 12, a distance of 120.00 feet to a found 3/4-inch iron pipe;

Thence South 86 deg. 21' 24" East, with the Southerly line of said Lot 12 and the Southerly line of Lot 13 and Lot 14, as the same is shown upon the recorded plat of "Berwick Arms", of record in Plat Book 34, Page 79, a distance of 167.26 feet to a found 3/4-inch iron pipe at the Southwesterly corner of Reserve "D" a 0.396 acre tract, (by survey), conveyed to Colonial Village Berwick, LLC, of record in Instr. No. 200605020083518;

Thence South 34 deg. 38' 34" East, with the Southerly line of said 0.396 acre tract, a distance of 117.21 feet to a set 3/4 iron pipe at the Northwesterly corner of Lot 15, as the same is shown upon the recorded Plat of "Berwick Arms", of record in Plat Book 34;

Thence South 3 deg. 26' 36" West, with the Westerly line of Lots 15 through 23, inclusive, as the same is shown upon the recorded Plat of "Berwick Arms", of record in Plat Book 34, Page 79, a distance of 537.65 feet to a found 3/4-inch pinch top at the Southwest corner of said Lot 23, and in the Northerly right-of-way line of Livingston Avenue;

Thence North 86 deg. 30' 00" West, along the North right-of-way line of Livingston Avenue, a distance of 525.55 feet to a found 3/4-inch iron pipe at the intersection of the North right-of-way of Livingston Avenue and the East right-of-way line of Rand Avenue;

Thence with the Easterly right-of-way line of Rand Avenue, as the same is shown upon the recorded Plat of "Dedication of Rand Avenue and Allendale Drive", of record in Plat Book 32, Page 104, the following Six (6)

courses:

- 1) North 3 deg. 26' 36" East, a distance of 116.88 feet to a found 5/8-inch rebar;
- 2) North 6 deg. 33' 29" West, a distance of 28.79 feet to a found 5/8-inch rebar;
- 3) North 3 deg. 26' 36" East, a distance of 55.00 feet to a set 3/4-inch iron pipe at a point of curvature;
- 4) Thence with a curve to the left, having a radius of 230.00 feet, an arc length of 98.42 feet, a central angle of 24 deg. 31' 02" and a chord which bears North 8 deg. 48' 55" West, a chord distance of 97.67 feet to a found 5/8-inch rebar iron pin at a point of reverse curvature;
- 5) Thence with a curve to the right, having a radius of 170.00 feet, an arc length of 73.86 feet, a central angle of 24 deg. 53' 37" and a chord which bears North 8 deg. 37' 37" West, a chord distance of 73.28 feet to a set 3/4-inch iron pipe at the point of tangency;
- 6) North 3 deg. 53' 06" East, a distance of 373.82 feet to a found 5/8-inch rebar at a point of curvature;

Thence with a curve to the right, having a radius of 10.00 feet, an arc length of 15.67 feet, a central angle of 89 deg. 45' 30" and a chord which bears North 48 deg. 45' 51" East, a chord distance of 14.11 feet, to a found 5/8-inch rebar, at the point of tangency and being in the Southerly right-of-way of said Allendale Drive;

Thence South 86 deg. 21' 24" East, along the Southerly right-of-way line of Allendale Drive, a distance of 314.56 feet, returning to the point of Beginnings, and containing 8.758 acres of land more or less, being subject to all restrictions, easements, and right-of-way of previous record.

Basis of Bearings:

The centerline of Livingston Avenue was assigned a bearing of South 86 deg. 30' East as shown on the record Plat of Berwick Arms, of record in Plat Book 34, Page 79.

Tract III:

Being located in Section 17, Township 12, Range 21, Refugee Lands, more particularly described as follows:

Beginning at a 3/4-inch iron pipe found in the Northerly right-of-way line of Allendale Drive and at the Southwest corner of Lot 11, as the same is shown upon the recorded Plat of "Berwick Arms", of record in Plat Book 34, Page 79;

Thence North 86 deg. 21' 24" West, with the Northerly right-of-way line of Allendale Drive as the same is shown upon the recorded Plat of "Dedication of Rand Avenue and Allendale Drive", of record in Plat Book 32, Page 104, a distance of 259.05 feet to a found 5/8-inch rebar at a point of curvature;

Thence with a curve to the right, having a radius of 10.00 feet, an arc length of 15.69 feet, a central angle of 89 deg. 53' 30" and a chord which bears North 41 deg. 24' 39" West, a chord distance of 14.13 feet to a found 5/8-inch rebar, at the point of tangency and being in the Easterly right-of-way of said Rand Avenue, as the same is shown upon the recorded Plat of "Dedication of Rand Avenue and Allendale Drive", of record in Plat Book 32, Page 104;

Thence North 3 deg. 32' 06" East, along the Easterly right-of-way line of said Rand Avenue, a distance of 110.31 feet to a found 3/4-inch iron pipe at the Southwest corner of Lot 49, as the same is shown upon the recorded Plat of "Barnett Heights Amended", of record in Plat Book 27, Page 74;

Thence South 86 deg. 15' 31" East, with the Southerly line of said Lot 49, and the Southerly line of Lot 42, as the same is shown upon the recorded Plat of "Barnett Heights Amended", of record in Plat Book 27, Page 74, a distance of 269.26 feet to a found 3/4-inch iron pipe at the Northwest corner of said Lot 11;

Thence South 3 deg. 38' 36" West, with the Westerly line of said Lot 11, a distance of 119.83 feet, returning to the point of Beginning, and containing 0.920 acres of land, more or less, being subject to all restrictions, easements, and right-of-way of previous records.

Basis of Bearings:

The centerline of Livingston Avenue was assigned a bearing of South 86 deg. 30' East as shown on the record plat of Berwick Arms, of record in Plat Book 34, Page 79.

Tract IV:

Being located in Section 17, Township 12, Range 21, Refugee Lands, and being all of Reserve "D", as the same is shown upon the recorded Plat of "Berwick Arms", of record in Plat Book 34, Page 79, more particularly described as follows:

Beginning at a 3/4-inch iron pipe found at the Southeast corner of Lot 14, as the same is shown upon the recorded Plat of "Berwick Arms", of record in Plat Book 34, Page 79;

Thence North 33 deg. 29' 10" East, with the Easterly line of said Lot 14, a distance of 119.46 feet to a set 3/4-inch iron pipe, at the Northeast corner of said Lot 14 and in the Southerly right-of-way line of Allendale Drive, as the same is shown upon the recorded Plat of "Dedication of Rand Avenue and Allendale Drive", of record in Plat Book 32, Page 104;

Thence with a curve to the right, having a radius of 125.00 feet, an arc length of 48.10 feet, a central angle of 22 deg. 02' 54" and a chord which bears South 45 deg. 40' 01" East, a chord distance of 47.81 feet to set 3/4-inch iron pipe at a point of tangency;

Thence South 34 deg. 38' 34" East, along the Southerly right-of-way line of Allendale Drive, a distance of 113.06 feet to a set 3/4-inch iron pipe at a point of curvature;

Thence with a curve to the right, having a radius of 125.00 feet, an arc length of 9.08 feet, a central angle of 4 deg. 09' 46", and a chord which bears South 32 deg. 33' 41" East, a chord distance of 9.08 feet, to a set 3/4-inch iron pipe, at the Northeast corner of Lot 15, as the same is shown upon the recorded Plat of "Berwick Arms", of record in Plat Book 34, Page 79;

Thence South 58 deg. 52' 15" West, with the Northerly line of said Lot 15, a distance of 119.90 feet, to a set 3/4-inch iron pipe, at the Northwest corner of said Lot 15 and in the Easterly line of an 8.758 acre tract, conveyed to Colonial Village Berwick, LLC, of record in Instr. No. 200605020083518.

Thence North 34 deg. 38' 34" West, with the Easterly line of said 8.758 acre tract, a distance of 117.21 feet, returning to the point of Beginning, and containing 0.396 acres of land, more or less, being subject to all restrictions, easements, and rights-of-way of previous record.

Basis of Bearings:

The centerline of Livingston Avenue was assigned a bearing of South 86 deg. 30' East as shown on the record Plat of Berwick Arms, of record in Plat Book 34, Page 79.

Tract V (Parcel I):

Being located in Section 17, Township 12, Range 21, Refugee Lands, and being all of Lot 11, as the same is shown upon the recorded Plat of "Berwick Arms", of record in Plat Book 34, Page 79, more particularly described as follows:

Beginning at a 3/4-inch iron pipe found in the Northerly right-of-way line of Allendale Drive as the same is shown upon the recorded Plat of "Dedication of Rand Avenue and Allendale Drive", of record in Plat Book 32, Page 104 and at the Southwest corner of said Lot 11;

Thence North 3 deg. 38' 36" East, with the Westerly line of said Lot 11, a distance of 119.83 feet to a found 3/4-inch iron pipe in the Southerly line of Lot 42, as the same is shown upon the recorded Plat of "Barnett Heights Amended", of record in Plat Book 27, Page 74;

Thence South 86 deg. 15' 31" East, with the Southerly line of said Lot 42, a distance of 65.00 feet to a found 3/4-inch pinch top at the Southeast corner of said Lot 42 and being in the Westerly right-of-way line of Olney Drive;

Thence South 3 deg. 38' 36" West, with the Westerly right-of-way line of Olney Drive, a distance of 109.71 feet to a set 3/4-inch iron pipe at a point of curvature;

Thence with a curve to the right, having a radius of 10.00 feet, an arc length of 15.71 feet, a central angle of 90 deg. 00' 00" and a chord which bears South 48 deg. 38' 36" West, a chord distance of 14.14 feet to a set 3/4-inch iron pipe at a point of tangency in the Northerly right-of-way line of said Allendale Drive;

Thence North 86 deg. 21' 24" West, with the said Northerly right-of-way line of Allendale Drive, a distance of 55.00 feet, returning to the point of Beginning, and containing 0.178 acres of land, more or less, being subject to all restrictions, easements, and right-of-way, of previous records.

Basis of Bearings:

The centerline of Livingston Avenue was assigned a bearing of South 86 deg. 30' East as shown on the record Plat of Berwick Arms, of record in Plat Book 34, Page 79.

Tract V (Parcel II):

Being located in Section 17, Township 12, Range 21, Refugee Lands, and being all of Lots 1 through 10, inclusive, together with Reserve "B" and Reserve "C", as the same is shown upon the recorded Plat of "Berwick Arms", of record in Plat Book 34, Page 79, more particularly described as follows:

Beginning at a 3/4-inch pinch top found in the Easterly right-of-way line of Olney Drive and at the Southwesterly corner of Lot 41, as the same is shown upon the recorded Plat of "Barnett Heights Amended", of record in Plat Book 27, Page 74;

Thence South 86 deg. 15' 31" East, with the Southerly line of said Lot 41, and the Southerly line of a 0.616 acre tract (by survey), conveyed to Colonial Village Berwick, LLC, of record in Instr. No. 200605020083518, a distance of 323.47 feet to a set 3/4 iron pipe, in the Westerly right-of-way line of New York Central R.R.;

Thence South 34 deg. 38' 26" East, with the Westerly right-of-way line of New York Central R.R., a distance of 284.14 feet to a found 3/4 iron pipe in the Westerly right-of-way line of New York Central R.R. and at the Northwest corner of a 2.868 acre tract (by survey), conveyed to Colonial Village Berwick, LLC, of record in Instr.

No. 200701110006858;

Thence South 3 deg. 26' 36" West, with the Westerly line of said 2.868 acre tract (by survey), a distance of 694.80 feet to a set 3/4 iron pipe, at the Southwest corner of the said 2.868 acre tract, and being in the Northerly right-of-way line of Livingston Avenue;

Thence North 86 deg. 30' 00" West, along the North right-of-way line of Livingston Avenue, a distance of 125.02 feet to a set 3/4 iron pipe at a point of curvature;

Thence with a curve to the right, having a radius of 20.00 feet, an arc length of 31.40 feet, a central angle of 89 deg. 56' 36" and a chord which bears North 41 deg. 31' 42" West, a chord distance of 28.27 feet to a set 3/4 iron pipe at a point of tangency in the Easterly right-of-way line of Brookway Road;

Thence with the Easterly right-of-way line of Brookway Road the following Six (6) courses:

- 1) North 3 deg. 26' 36" East, a distance of 516.11 feet, to a found 5/8-inch rebar at a point of curvature;
- 2) Thence with a curve to the left, having a radius of 175.00 feet, an arc length of 116.33 feet, a central angle of 38 deg. 05' 10" and a chord which bears North 15 deg. 35' 59" West, a chord distance of 114.20 feet, to a found 5/8-inch rebar at a point of tangency;
- 3) North 34 deg. 38' 34" West, a distance of 113.06 feet, to found 5/8-inch rebar at a point of curvature;
- 4) Thence with a curve to the left, having a radius of 175.00 feet, an arc length of 157.95 feet, a central angle of 51 deg. 42' 50" and a chord which bears North 60 deg. 29' 59" West, a chord distance of 152.64 feet, to a set 3/4 iron pipe at a point of tangency;
- 5) North 86 deg. 21' 24" West, a distance of 99.89 feet, to a set 3/4 iron pipe at a point of curvature;
- 6) Thence with a curve to the right, having a radius of 10.00 feet, an arc length of 15.71 feet, a central angle of 90 deg. 00' 00" and a chord which bears North 41 deg. 21' 24" West, a chord distance of 14.14 feet, to a set 3/4 iron pipe at a point of tangency in the Easterly right-of-way line of Olney Drive;

Thence North 3 deg. 38' 36" East, with the said Easterly right-of-way line of Olney Drive, a distance of 109.63 feet, returning to the point of Beginning, and containing 3.978 acres of land, more or less, being subject to all restrictions, easements, and rights-of-ways of previous record.

Basis of Bearings:

The centerline of Livingston Avenue was assigned a bearing of South 86 deg. 30' East as shown on the record Plat of Berwick Arms, of record in Plat Book 34, Page 79.

Tract VI (Parcel I):

Being located in Section 17, Township 12, Range 21, Refugee Lands, and being all of Lots 12 through 14, inclusive, as the same is shown upon the recorded Plat of "Berwick Arms", of record in Plat Book 34, Page 79, more particularly described as follows:

Beginning at a 3/4 iron pipe found in the Southerly right-of-way line of Allendale Drive and at the Northwest corner of said Lot 12;

Thence South 86 deg. 21' 24" East, with the said Southerly right-of-way line of Allendale Drive, a distance of

164.83 feet to a found 5/8 rebar at a point of curvature;

Thence with a curve to the right, having a radius of 125.00 feet, an arc length of 64.72 feet, a central angle of 29 deg. 39' 57" and a chord which bears South 71 deg. 31' 26" East, a chord distance of 64.00 feet, a set 3/4-inch iron pipe at the Northwest corner of a 0.396 acre tract, conveyed to Colonial Village Berwick, LLC, of record in Instr. No. 200605020083518;

Thence South 33 deg. 29' 10" West, with the Westerly line of said 0.396 acre tract, a distance of 119.46 feet, to a found 3/4 iron pipe, in the Easterly line of a 8.758 acre tract, conveyed to Colonial Village Berwick, LLC, of record in Instr. No. 200605020083518;

Thence North 86 deg. 21' 24" West, along the Northerly line of said 8.758 acre tract, a distance of 167.26 feet to a found 3/4 iron pipe at the Southwest corner of said Lot 12;

Thence North 3 deg. 38' 36" East, along the Westerly line of said Lot 12, a distance of 120.00 feet, returning to the point of Beginning, and containing 0.546 acres of land, more or less, being subject to all restrictions, easements, and rights-of-ways of previous record.

Basis of Bearings:

The centerline of Livingston Avenue was assigned a bearing of South 86 deg. 30' East as shown on the record Plat of Berwick Arms, of record in Plat Book 34, Page 79.

Tract VI (Parcel II):

Being located in Section 17, Township 12, Range 21, Refugee Lands, and being all of Lots 15 through 23, inclusive, as the same is shown upon the recorded Plat of "Berwick Arms", of record in Plat Book 34, Page 79, more particularly described as follows:

Beginning at a 3/4 iron pipe set in the Westerly right-of-way line of Brookway Road and at the Northeast corner of said Lot 15, and at the Southeasterly corner of a 0.396 acre tract, conveyed to Colonial Village Berwick, LLC, of record in Instr. No. 200605020083518;

Thence with the Westerly right-of-way line of said Brookway Road, the following Three (3) courses;

1) Thence with a curve to the right, having a radius of 125.00 feet, an arc length of 74.01 feet, a central angle of 33 deg. 55' 24" and a chord which bears South 13 deg. 31' 06" East, a chord distance of 72.93 feet to a found 5/8-inch rebar at a point of tangency;

2) South 3 deg. 26' 36" West, a distance of 516.03 feet to a set 3/4-inch iron pipe at a point of curvature;

3) Thence with a curve to the right, having a radius of 20.00 feet, an arc length of 31.44 feet, a central angle of 90 deg. 03' 24" and a chord which bears South 48 deg. 28' 18" West, a chord distance of 28.30 feet to set 3/4-inch iron pipe at a point of tangency, in the Northerly right-of-way line of Livingston Avenue;

Thence North 86 deg. 30' 00" West, along the North right-of-way line of Livingston Avenue, a distance of 99.98 feet to a found 3/4-inch pinch top at the Southeast corner of an 8.758 acre tract, conveyed to Colonial Village Berwick, LLC, of record in Instr. No. 200605020083518;

Thence North 3 deg. 26' 36" East, with the Easterly line of said 8.758 acre tract, a distance of 537.65 feet to a set 3/4-inch iron pipe, at the Northwest corner of said Lot 15 and at the Southwest corner of said 0.396 acre tract;

Thence North 58 deg. 52' 15" East, with the Southerly line of said 0.396 acre tract, a distance of 119.90 feet, returning to the point of Beginning, and containing 1.579 acres of land more or less, being subject to all restrictions, easements, and rights-of-ways of previous record.

Basis of Bearings:

The centerline of Livingston Avenue was assigned a bearing of South 86 deg. 30' East as shown on the record Plat of Berwick Arms, of record in Plat Book 34, Page 79.

Tract VII:

Being located in Section 17, Township 12, Range 21, Refugee Lands, and being all of Reserve "A", as the same is shown upon the recorded Plat of "Berwick Arms", of record in Plat Book 34, Page 79, more particularly described as follows:

Beginning at a 3/4-inch iron pipe set, at the Southeasterly corner of Lot 41, as the same is shown upon the recorded Plat of "Barnett Heights Amended", of record in Plat Book 27, Page 74, and in the Northerly line of a 3.978 acre tract, conveyed to Colonial Village Berwick, LLC, of record in Instr. No. 200605020083518;

Thence North 16 deg. 33' 39" West, with the Easterly line of Lots 36 through 41, inclusive, as the same is shown upon the recorded Plat of "Barnett Heights Amended", of record in Plat Book 27, Page 74, a distance of 369.86 feet to a found 3/4 iron pipe at an angle point in said Lot 36;

Thence South 83 deg. 58' 10" East, with the Easterly line of said Lot 36, a distance of 4.49 feet to a found 3/4 iron pipe in the Westerly right-of-way line of New York Central R.R.;

Thence South 34 deg. 36' 26" East, with the said Westerly right-of-way line of New York Central R.R., a distance of 442.08 feet, to a 3/4-inch iron pipe set at the Northeast corner of said 3.978 acre tract;

Thence North 86 deg. 15' 31" West, with the Northerly line of the said 3.978 acre tract, a distance of 150.44 feet, returning to the point of Beginning, and containing 0.616 acres of land, more or less, being subject to all restrictions, easements, and rights-of-way of previous record.

Basis of Bearings:

The centerline of Livingston Avenue was assigned a bearing of South 86 deg. 30' East as shown on the record Plat of Berwick Arms, of record in Plat Book 34, Page 79.

UCC FINANCING STATEMENT**FOLLOW INSTRUCTIONS**

A. NAME & PHONE OF CONTACT AT FILER [optional] Anthony Kang (305) 428-4515
B. E-MAIL CONTACT AT FILER [optional] ANTHONY.KANG@SAUL.COM
C. SEND ACKNOWLEDGMENT TO: (Name and Address) Anthony Kang Saul Ewing Arnstein & Lehr LLP 701 Brickell Avenue, 17th Floor Miami, FL 33131

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S NAME – Provide only one Debtor name (1 a or 1b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); If any part of the Individual Debtor's name will not fit in line 1b, leave all of item 1 blank, check here ☐ and provide the Individual Debtor Information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

OR	1a. ORGANIZATION'S NAME APEX COLONIAL HOLDINGS LLC				
	1b. INDIVIDUAL'S LAST NAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX	
1c. MAILING ADDRESS 2365 NOSTRAND AVENUE		CITY BROOKLYN	STATE NY	POSTAL CODE 11210	COUNTRY USA

2. DEBTOR'S NAME – Provide only one Debtor name (2a or 2b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); If any part of the Individual Debtor's name will not fit in line 2b, leave all of item 2 blank, check here ☐ and provide the Individual Debtor Information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

OR	2a. ORGANIZATION'S NAME				
	2b. INDIVIDUAL'S LAST NAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX	
2c. MAILING ADDRESS		CITY	STATE	POSTAL CODE	COUNTRY

3. SECURED PARTY'S NAME (or NAME of ASSIGNEE of ASSIGNOR SECURED PARTY) – Provide only one Secured Party name (3a or 3b)

OR	3a. ORGANIZATION'S NAME EF SBC 2015-2 LLC, a Delaware limited liability company				
	3b. INDIVIDUAL'S LAST NAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX	
3c. MAILING ADDRESS 53 Forest Avenue		CITY Old Greenwich	STATE CT	POSTAL CODE 06870	COUNTRY USA

4. COLLATERAL: This financing statement covers the following collateral:

All right, title and interest, whether now owned or hereafter acquired in and to all of Debtor's membership interest (the "Interest") in Apex Colonial OH LLC, a Delaware limited liability company (the "Company"), including any certificate or other instrument now or hereafter representing the Interest, any interest in the capital account of the Company, any distribution made in connection with the Interest, all privileges and preferences appertaining or incidental to the Interest, and the proceeds of such Interest.

5. Check only if applicable and check only one box: Collateral is ☐ held in a Trust (see UCC1Ad, item 17 and instructions) ☐ being administered by a decedent's Personal Representative

6a. Check only if applicable and check only one box:

☐ Public-Finance Transaction ☐ Manufactured-Home Transaction ☐ A Debtor is a Transmitting Utility

6b. Check only if applicable and check only one box:

☐ Agricultural Lien ☐ Non-UCC Filing

7. ALTERNATIVE DESIGNATION (if applicable): ☐ Lessee/Lessor ☐ Consignee/Consignor ☐ Seller/Buyer ☐ Bailee/Bailor ☐ Licensee/Licensor

8. OPTIONAL FILER REFERENCE DATA

EXHIBIT 6

GUARANTY OF PAYMENT AND PERFORMANCE

This Guaranty of Payment and Performance (this "Guaranty") is made as of this ___ day of August, 2020, by ARON PURETZ and ORON ZARUM (individually and collectively, "Guarantor"), in favor of EF SBC 2015-2 LLC, a Delaware limited liability company ("Lender").

RECITALS

APEX COLONIAL OH LLC, a Delaware limited liability company ("Borrower") has requested and Lender has agreed to make a loan to Borrower in the amount of Fifteen Million Five Hundred Thousand and No/100 Dollars (\$15,500,000.00) (the "Loan"), as evidenced by that certain Promissory Note dated as of even date herewith, from Borrower in favor of Lender in the original principal amount of Fifteen Million Five Hundred Thousand and No/100 Dollars (\$15,500,000.00) (as the same may be amended, restated, modified or replaced from time to time, the "Note"). As a condition precedent to Lender making the Loan, Lender has required Guarantor to execute and deliver this Guaranty to Lender.

AGREEMENTS

Guarantor will receive a material benefit from Lender making the Loan to Borrower. For good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and in order to induce Lender to make the Loan to Borrower, Guarantor hereby guarantees to Lender the prompt and full payment of the indebtedness and obligations described below in this Guaranty (collectively called the "Guaranteed Obligations"), this Guaranty being upon the following terms and conditions:

Section 1. Guaranty of Payment.

Guarantor hereby unconditionally and irrevocably guarantees to Lender the punctual payment when due, whether by lapse of time, by acceleration of maturity, or otherwise, of all principal, interest (including interest accruing after maturity and after the commencement of any bankruptcy or insolvency proceeding by or against Borrower, whether or not allowed in such proceeding), prepayment premiums, fees, late charges, costs, expenses, indemnification indebtedness, and other sums of money now or hereafter due and owing, or which Borrower is obligated to pay, pursuant to the terms of the Note, that certain Open-End Mortgage, Security Agreement and Fixture Filing dated as of even date herewith from Borrower, as Mortgagor, in favor of Lender, to be recorded in the public records of Franklin County, Ohio (as the same may be amended, restated, modified or replaced from time to time, the "Mortgage"), that certain Environmental Compliance and Indemnity Agreement dated as of even date herewith from Borrower and Guarantor, collectively as Obligor, in favor of Lender (as the same may be amended, restated, modified or replaced from time to time, the "Environmental Indemnity Agreement"), any application, agreement, note or other document executed and delivered by Borrower in connection with any Loan, or any of the other Loan Documents (as defined in the Note), including, without limitation, any letter of credit issued by Lender in connection with the Loan, as the same may from time to time be amended, supplemented, restated or otherwise modified (collectively, the "Indebtedness"). The Indebtedness includes all reasonable costs and expenses incurred by Lender in seeking to enforce Lender's rights and remedies with respect to the Indebtedness, and to protect, defend, maintain or enforce Lender's liens or security interests, including, without limitation, collection costs, default rates of interest, reasonable attorneys' fees and costs at trial and appellate levels and related costs, and costs of alternative dispute resolution, whether or not suit is filed or other proceedings are initiated thereon. This Guaranty covers the Indebtedness presently outstanding and the Indebtedness arising subsequent to the date hereof, including all amounts advanced by Lender in stages or installments. The guaranty of Guarantor as set forth in this Section is a continuing guaranty of payment and not a guaranty of collection.

The foregoing obligations guaranteed under this Section are defined as the "Guaranteed Payment Obligations". The Guaranteed Payment Obligations are included as part of the Guaranteed Obligations for all purposes of this Guaranty.

Section 2. Guaranty of Performance.

Guarantor hereby unconditionally and irrevocably guarantees to Lender the complete performance when due of all other Obligations of Borrower under all of the Loan Documents, including, without limiting the generality of the foregoing, all such Obligations of Borrower to duly and punctually perform and observe all other terms, covenants and conditions of the Note, the Mortgage, the Environmental Indemnity Agreement, and all other Loan Documents.

The foregoing obligations guaranteed under this Section are defined as the "Guaranteed Performance Obligations." The Guaranteed Performance Obligations are included as part of the Guaranteed Obligations for all purposes of this Guaranty.

The liability and obligations under this Section shall not be limited or restricted by the existence of, or any terms of, the guaranty of payment under Section 1.

Section 3. Primary Liability of Guarantor.

(a) This Guaranty is an absolute, irrevocable and unconditional guaranty of payment and performance, and Guarantor shall be liable for the payment and performance of the Guaranteed Obligations as a primary obligor. This Guaranty shall be effective as a waiver of, and Guarantor hereby expressly waives, any right to which Guarantor may otherwise have been entitled, whether existing under statute, at law or in equity, to require Lender to take prior recourse or proceedings against any collateral, security or person. It shall not be necessary for Lender, in order to enforce such payment or performance by Guarantor, first to institute suit or pursue or exhaust any rights or remedies against Borrower or other person liable on such indebtedness or performance, or to enforce any rights against any security given to secure such indebtedness or for such performance, or to join Borrower or any other person liable for the payment or performance of the Guaranteed Obligations or any part thereof in any action to enforce this Guaranty, or to resort to any other means of obtaining payment or performance of the Guaranteed Obligations provided, however, that nothing herein contained shall prevent Lender from suing on the Note or exercising any other right under the Loan Documents.

(b) Suit may be brought or demand may be made against Borrower or against any or all parties who have signed this Guaranty or any other guaranty covering all or any part of the Guaranteed Obligations, or against any one or more of them, separately or together, without impairing the rights of Lender against any party hereto. Any time that Lender is entitled to exercise its rights or remedies hereunder, it may in its discretion elect to demand payment and/or performance. If Lender elects to demand performance, it shall at all times thereafter have the right to demand payment until all of the Guaranteed Obligations have been paid and performed in full. If Lender elects to demand payment, it shall at all times thereafter have the right to demand performance until all of the Guaranteed Obligations have been paid and performed in full.

(c) The liability of Guarantor or any other Person hereunder for Guaranteed Obligations arising out of or related to the Environmental Indemnity Agreement shall not be limited or affected in any way by any provision in this Guaranty, the other Loan Documents or applicable law limiting the liability of Borrower, Guarantor or such other Person, or Lender's recourse or rights to a deficiency judgment.

Section 4. Certain Agreements and Waivers by Guarantor.

(a) Guarantor agrees that neither Lender's rights or remedies nor Guarantor's obligations under the terms of this Guaranty shall be released, diminished, impaired, reduced or affected by any one or more of the following events, actions, facts, or circumstances, and the liability of Guarantor under this Guaranty shall be absolute, unconditional and irrevocable irrespective of:

(i) any limitation on the liability of, or recourse against, any other person in any Loan Document or arising under any law;

(ii) any claim or defense that this Guaranty was made without consideration or is not supported by adequate consideration or that the obligations of Guarantor hereunder exceed or are more burdensome than those of Borrower under the other Loan Documents;

(iii) the taking or accepting of any other security or guaranty for, or right of recourse with respect to, any or all of the Guaranteed Obligations;

(iv) the operation of any laws (other than statutes of limitation) regarding the limitation of actions, all of which are hereby waived as a defense to any action or proceeding brought by Lender against Guarantor, to the fullest extent permitted by law;

(v) any homestead exemption or any other exemption under applicable law;

(vi) any release, surrender, abandonment, exchange, alteration, sale or other disposition, subordination, deterioration, waste, failure to protect or preserve, impairment, or loss of, or any failure to create or perfect any lien or security interest with respect to, or any other dealings with, any collateral or security at any time existing or purported, believed or expected to exist in connection with any or all of the Guaranteed Obligations, or any impairment of Guarantor's recourse against any person or collateral;

(vii) whether express or by operation of law, any partial release of the liability of Guarantor hereunder (except to the extent paid, performed or expressly so released) or any complete or partial release of Borrower or any other person liable, directly or indirectly, for the payment or performance of any or all of the Guaranteed Obligations;

(viii) the insolvency, bankruptcy, dissolution, liquidation, termination, receivership, reorganization, merger, consolidation, change of form, structure or ownership, sale of all assets, or lack of corporate, partnership or other power of Borrower or any other person at any time liable for the payment of any or all of the Guaranteed Obligations;

(ix) either with or without notice to or consent of Guarantor, any renewal, extension, modification, supplement, subordination or rearrangement of the terms of any or all of the Guaranteed Obligations and/or any of the Loan Documents, including material alterations of the terms of payment (including changes in maturity date(s) and interest rate(s) or performance (including changes with respect to construction of the Improvements) or any other terms thereof, or any waiver, termination, or release of, or consent to departure from, any of the Loan Documents or any other guaranty of any or all of the Guaranteed Obligations, or any adjustment, indulgence, forbearance, or compromise that may be granted from time to time by Lender to Borrower or any other person at any time liable for the payment or performance of any or all of the Guaranteed Obligations;

(x) any neglect, lack of diligence, delay, omission, failure, or refusal of Lender to take or prosecute (or in taking or prosecuting) any action for the collection or enforcement of any of the Guaranteed Obligations, or to foreclose or take or prosecute any action to foreclose (or in foreclosing or taking or prosecuting any action to foreclose) upon any security therefor, or to exercise (or in exercising) any other right or power with respect to any security therefor, or to take or prosecute (or in taking or prosecuting) any action in connection with any Loan Document, or any failure to sell or otherwise dispose of in a commercially reasonable manner any collateral securing any or all of the Guaranteed Obligations;

(xi) any failure of Lender to notify Guarantor of any creation, renewal, extension, rearrangement, modification, supplement, subordination, or assignment of the Guaranteed Obligations or any part thereof, or of any Loan Document, or of any release of or change in any security, or of the occurrence or existence of any Event of Default, or of any other action taken or refrained from being taken by Lender against Borrower or any security or other recourse, or of any new agreement between Lender and Borrower, it being understood that Lender shall not be required to give Guarantor any notice of any kind under any circumstances with respect to or in connection with the Guaranteed Obligations, any and all rights to notice Guarantor may have otherwise had being hereby waived by Guarantor, and Guarantor shall be responsible for obtaining for itself information regarding Borrower, including any changes in the business or financial condition of Borrower, and Guarantor acknowledges and agrees that Lender shall have no duty to notify Guarantor of any information which Lender may have concerning Borrower;

(xii) the existence of any claim, counterclaim, set-off or other right that Guarantor may at any time have against Borrower, Lender, or any other person, whether or not arising in connection with this Guaranty, the Note, the Environmental Indemnity Agreement, the Mortgage, or any other Loan Document; provided, however, that the foregoing shall not be deemed a waiver of Guarantor's right to assert any compulsory counterclaim maintained in a court of the United States or the State of New York, the State of Ohio or other court of competent jurisdiction if such counterclaim is compelled under local law or procedure;

(xiii) the unenforceability of all or any part of the Guaranteed Obligations against Borrower, whether because the Guaranteed Obligations exceed the amount permitted by law or violate any usury law, or because the persons creating the Guaranteed Obligations acted in excess of their authority, or because of a lack of validity or enforceability of or defect or deficiency in any of the Loan Documents, or because Borrower has any valid defense, claim or offset with respect thereto, or because Borrower's obligation ceases to exist by operation of law, or because of any other reason or circumstance, it being agreed that Guarantor shall remain liable hereon regardless of whether Borrower or any other person be found not liable on the Guaranteed Obligations, or any part thereof, for any reason (and regardless of any joinder of Borrower or any other party in any action to obtain payment or performance of any or all of the Guaranteed Obligations);

(xiv) any order, ruling or plan of reorganization emanating from proceedings under Title 11 of the United States Code with respect to Borrower or any other person, including any extension, reduction, composition, or other alteration of the Guaranteed Obligations, whether or not consented to by Lender, or any action taken or omitted by Lender in any such proceedings, including any election to have Lender's claim allowed as being secured, partially secured or unsecured, any extension of credit by Lender in any such proceedings or the taking and holding by Lender of any security for any such extension of credit;

(xv) any other condition, event, omission, or action that would in the absence of this paragraph result in the release or discharge of the Guarantor from the performance or observance of any obligation, covenant or agreement contained in this Guaranty or any other agreement;

(xvi) any early termination of any of the Guaranteed Obligations; or

(xvii) Lender's enforcement or forbearance from enforcement of the Guaranteed Obligations on a net or gross basis.

(b) In the event any payment by Borrower or any other person to Lender is held to constitute a preference, fraudulent transfer or other voidable payment under any bankruptcy, insolvency or similar law, or if for any other reason Lender is required to refund such payment or pay the amount thereof to any other party, such payment by Borrower or any other party to Lender shall not constitute a release of Guarantor from any liability hereunder, and this Guaranty shall continue to be effective or shall be reinstated (notwithstanding any prior release, surrender or discharge by Lender of this Guaranty or of Guarantor), as the case may be, with respect to, and this Guaranty shall apply to, any and all amounts so refunded by Lender or paid by Lender to another person (which amounts shall constitute part of the Guaranteed Obligations), and any interest paid by Lender and any reasonable attorneys' fees, costs and expenses paid or incurred by Lender in connection with any such event.

(c) It is the intent of Guarantor and Lender that the obligations and liabilities of Guarantor hereunder are absolute, irrevocable and unconditional under any and all circumstances and that until the Guaranteed Obligations are fully and finally paid and performed, and not subject to refund or disgorgement, the obligations and liabilities of Guarantor hereunder shall not be discharged or released, in whole or in part, by any act or occurrence that might, but for the provisions of this Guaranty, be deemed a legal or equitable discharge or release of a guarantor.

(d) Guarantor's obligations shall not be affected, impaired, lessened or released by loans, credits or other financial accommodations now existing or hereafter advanced by Lender to Borrower in excess of the Guaranteed Obligations. All payments, repayments and prepayments of the Loan, whether voluntary or involuntary, received by Lender from Borrower, any other person or any other source (other than from Guarantor pursuant to a demand by Lender hereunder), and any amounts realized from any collateral for the Loan, shall be deemed to be applied first to any portion of the Loan which is not covered by this Guaranty, and last to the Guaranteed Obligations, and this Guaranty shall bind Guarantor to the extent of any Guaranteed Obligations that may remain owing to Lender. Lender shall have the right to apply any sums paid by Guarantor to any portion of the Loan in Lender's sole and absolute discretion.

(e) If acceleration of the time for payment of any amount payable by Borrower under the Note or any other Loan Document is stayed or delayed by any law or tribunal, all such amounts shall nonetheless be payable by Guarantor on demand by Lender.

(f) Guarantor hereby waives and agrees not to assert or take advantage of: (i) any right or claim of right to cause a marshalling of any of Borrower's assets or the assets of any other party now or hereafter held as security for the Indebtedness; (ii) the defense of laches in any action hereunder or for the payment of the Indebtedness and performance of any obligation hereby guaranteed; (iii) any defense that may arise by reason of the incapacity, lack of authority, death or disability of Guarantor, any other guarantor of the Loan, or Borrower or any other person or entity, or the voluntary or involuntary dissolution of Borrower, or the failure of Lender to file or enforce a claim against the estate (either in administration, bankruptcy, or any other proceeding) of Borrower or any other person or entity; (iv) any defense based on the failure of Lender to give notice of the existence, creation, or incurring of any new or additional indebtedness or obligation, or of any action or nonaction on the part of any other person

whomsoever, or any modification of the terms of the Loan Documents, or the Indebtedness, in connection with any obligation hereby guaranteed; (v) any defense based upon an election of remedies by Lender which destroys or otherwise impairs any subrogation rights of Guarantor or any other guarantor of the Loan or the right of Guarantor to proceed against Borrower or any other guarantor for reimbursement, or both; (vi) any defense based upon failure of Lender to commence an action against Borrower; (vii) any defense based upon acceptance of this Guaranty by Lender; (viii) any defense based upon the invalidity or unenforceability of any of the Loan Documents; (ix) any defense based upon any complete or partial release of liability contained in any of the Loan Documents; (x) any defense based upon any transfer by Borrower of all or any part of the collateral for the Loan; (xi) any defense based upon the failure of Lender to perfect any security or to extend or renew the perfection of any security; and (xii) any other legal or equitable defenses whatsoever to which Guarantor might otherwise be entitled.

Section 5. Subordination.

If, for any reason whatsoever, Borrower is now or hereafter becomes indebted to Guarantor:

(a) such indebtedness and all interest thereon and all liens, security interests and rights now or hereafter existing with respect to property of Borrower securing such indebtedness shall, at all times, be subordinate in all respects to the Guaranteed Obligations and to all liens, security interests and rights now or hereafter existing to secure the Guaranteed Obligations;

(b) Guarantor shall not be entitled to enforce or receive payment, directly or indirectly, of any such indebtedness of Borrower to Guarantor until the Guaranteed Obligations have been fully and finally paid and performed;

(c) Guarantor hereby assigns and grants to Lender a security interest in all such indebtedness and security therefor, if any, of Borrower to Guarantor now existing or hereafter arising, including any dividends and payments pursuant to debtor relief or insolvency proceedings referred to below. In the event of receivership, bankruptcy, reorganization, arrangement or other debtor relief or insolvency proceedings involving Borrower as debtor, Lender shall have the right to prove its claim in any such proceeding so as to establish its rights hereunder and shall have the right to receive directly from the receiver, trustee or other custodian (whether or not an Event of Default shall have occurred or be continuing under any of the Loan Documents), dividends and payments that are payable upon any obligation of Borrower to Guarantor now existing or hereafter arising, and to have all benefits of any security therefor, until the Guaranteed Obligations have been fully and finally paid and performed. If, notwithstanding the foregoing provisions, Guarantor should receive any payment, claim or distribution that is prohibited as provided above in this Section, Guarantor shall pay the same to Lender immediately, Guarantor hereby agreeing that it shall receive the payment, claim or distribution in trust for Lender and shall have absolutely no dominion over the same except to pay it immediately to Lender; and

(d) Guarantor shall promptly upon request of Lender from time to time execute such documents and perform such acts as Lender may reasonably require to evidence and perfect its interest and to permit or facilitate exercise of its rights under this Section, including execution and delivery of proofs of claim, further assignments and security agreements, and delivery to Lender of any promissory notes or other instruments evidencing indebtedness of Borrower to Guarantor. All promissory notes, accounts receivable ledgers or other evidences, now or hereafter held by Guarantor, of obligations of Borrower to Guarantor shall contain a specific written notice thereon that the indebtedness evidenced thereby is subordinated under and is subject to the terms of this Guaranty.

Section 6. Other Liability of Guarantor or Borrower.

If Guarantor is or becomes liable, by endorsement or otherwise, for any indebtedness owing by Borrower to Lender other than under this Guaranty, such liability shall not be in any manner impaired or affected hereby, and the rights of Lender hereunder shall be cumulative of any and all other rights that Lender may have against Guarantor. If Borrower is or becomes indebted to Lender for any indebtedness other than or in excess of the Guaranteed Obligations, any payment received or recovery realized upon such other indebtedness of Borrower to Lender may be applied to such other indebtedness. This Guaranty is independent of (and shall not be limited by) any other guaranty now existing or hereafter given. Further, Guarantor's liability under this Guaranty is in addition to any and all other liability Guarantor may have in any other capacity to Lender.

Section 7. Lender Assigns; Disclosure of Information.

This Guaranty is for the benefit of Lender and Lender's successors and assigns, and in the event of an assignment of the Guaranteed Obligations, or any part thereof, the rights and benefits hereunder, to the extent applicable to the Guaranteed Obligations so assigned, may be transferred with such Guaranteed Obligations. Guarantor waives notice of any transfer or assignment of the Guaranteed Obligations or any part thereof. Lender may sell or offer to sell the Loan or interests therein to one or more assignees or participants. Guarantor shall execute, acknowledge and deliver any and all instruments reasonably requested by Lender in connection therewith, and to the extent, if any, specified in any such assignment or participation, such assignee(s) or participant(s) shall have the same rights and benefits with respect to the Loan Documents as such person(s) would have if such person(s) were Lender hereunder. Lender may disclose to any such assignee or participant or prospective assignee or participant, to Lender's affiliates, to any regulatory body having jurisdiction over Lender and to any other parties as necessary or appropriate in Lender's reasonable judgment, any information Lender now has or hereafter obtains pertaining to the Guaranteed Obligations, this Guaranty, or Guarantor, including information regarding any security for the Guaranteed Obligations or for this Guaranty, and/or credit or other information on Guarantor and/or any other person liable, directly or indirectly, for any part of the Guaranteed Obligations.

Section 8. Binding Effect; Joint and Several Liability.

This Guaranty is binding not only on Guarantor, but also in the event of death transfer by operation of law or assignment, on Guarantor's heirs, personal representatives, successors and assigns. If this Guaranty is signed by more than one person, then all of the obligations of Guarantor arising hereunder shall be jointly and severally binding on each of the undersigned, and their respective heirs, personal representatives, successors and assigns, and the term "Guarantor" shall mean all of such persons and each of them individually.

Section 9. Governing Law; Submission to Jurisdiction.

This Guaranty was negotiated in the State of New York, and made by Guarantor and accepted by Lender in the State of New York, and the proceeds of the Note were disbursed from the State of New York, which state the parties agree has a substantial relationship to the parties and to the underlying transaction embodied hereby, and in all respects, including, without limiting the generality of the foregoing, matters of construction, validity and performance, this Guaranty and the obligations arising hereunder shall be governed by, and construed in accordance with, the laws of the State of New York applicable to contracts made and performed in such state (without regard to principles of conflict of laws) and any applicable law of the United States of America. To the fullest extent permitted by law, Guarantor irrevocably, and unconditionally waive any claim to assert that the law of any other jurisdiction governs

this Guaranty and this Guaranty shall be governed by and construed in accordance with the laws of the State of New York.

Any legal suit, action or proceeding against Lender or Guarantor arising out of or relating to this Guaranty may at Lender's option be instituted in the City of New York, County of New York or in a court of record of the State of Ohio in Franklin County, Ohio or in the United States District Court for the Southern District of Ohio and Guarantor waives any objections which it may now or hereafter have based on venue and/or forum non conveniens of any such suit, action or proceeding, and Guarantor hereby irrevocably submits to the jurisdiction of any such court in any suit, action or proceeding. Guarantor does hereby designate and appoint:

Chaim C. Zlotowitz, Esq.
Law Offices of Chaim C. Zlotowitz, Esq. PLLC
140A Washington Avenue, Suite 203
Cedarhurst, New York 11516

as its authorized agent to accept and acknowledge on its behalf service of any and all process which may be served in any such suit, action or proceeding in City of New York, County of New York, and agrees that service of process upon said agent at said address and written notice of said service mailed or delivered to Guarantor in the manner provided herein shall be deemed in every respect effective service of process upon Guarantor in any such suit, action or proceeding in the State of New York. Guarantor (i) shall give prompt notice to Lender of any changed address of its authorized agent hereunder, (ii) may at any time and from time to time designate a substitute authorized agent with an office in New York (which substitute agent and office shall be designated as the person and address for service of process), and (iii) shall promptly designate such a substitute if its authorized agent ceases to have an office in New York or is dissolved without leaving a successor.

Section 10. Invalidity of Certain Provisions.

If any provision of this Guaranty or the application thereof to any person or circumstance shall, for any reason and to any extent, be declared to be invalid or unenforceable, neither the remaining provisions of this Guaranty nor the application of such provision to any other person or circumstance shall be affected thereby, and the remaining provisions of this Guaranty, or the applicability of such provision to other persons or circumstances, as applicable, shall remain in effect and be enforceable to the maximum extent permitted by applicable law.

Section 11. Costs and Expenses of Enforcement.

Guarantor agrees to pay to Lender on demand all reasonable costs and expenses incurred by Lender in seeking to enforce Lender's rights and remedies under this Guaranty, including court costs, costs of alternative dispute resolution and reasonable attorneys' fees and costs, whether or not suit is filed or other proceedings are initiated hereon. All such reasonable costs and expenses incurred by Lender shall constitute a portion of the Guaranteed Obligations hereunder, shall be subject to the provisions hereof with respect to the Guaranteed Obligations and shall be payable by Guarantor within ten (10) days of written demand by Lender.

Section 12. No Usury.

It is not the intention of Lender or Guarantor to obligate Guarantor to pay interest in excess of that lawfully permitted to be paid by Guarantor under applicable law. Should it be determined that any portion of the Guaranteed Obligations or any other amount payable by Guarantor under this Guaranty

constitutes interest in excess of the maximum amount of interest that Guarantor, in Guarantor's capacity as guarantor, may lawfully be required to pay under applicable law, the obligation of Guarantor to pay such interest shall automatically be limited to the payment thereof in the maximum amount so permitted under applicable law. The provisions of this Section shall override and control all other provisions of this Guaranty and of any other agreement between Guarantor and Lender.

Section 13. Representations, Warranties, and Covenants of Guarantor.

Until the Guaranteed Obligations are paid and performed in full and each and every term, covenant and condition of this Guaranty is fully performed, Guarantor hereby represents, warrants, and covenants that: (a) Guarantor has a financial interest in Borrower and will derive a material and substantial benefit, directly or indirectly, from the making of the Loan to Borrower and from the making of this Guaranty by Guarantor; (b) this Guaranty is duly authorized and valid, and is binding upon and enforceable against Guarantor; (c) Guarantor is not, and the execution, delivery and performance by Guarantor of this Guaranty will not cause Guarantor to be, in violation of or in default with respect to any law or in default (or at risk of acceleration of indebtedness) under any agreement or restriction by which Guarantor is bound or affected; (d) unless Guarantor is a natural person, Guarantor is duly organized, validly existing, and in good standing under the laws of the state of its organization and has full power and authority to enter into and perform this Guaranty; (e) except as previously disclosed to Lender in writing, there is no litigation pending or, to the knowledge of Guarantor, threatened by or before any tribunal against or affecting Guarantor; (f) all financial statements and information heretofore furnished to Lender by Guarantor do, and all financial statements and information hereafter furnished to Lender by Guarantor will, fully and accurately, in all material aspects, present the condition (financial or otherwise) of Guarantor as of their dates and the results of Guarantor's operations for the periods therein specified, and, since the date of the most recent financial statements of Guarantor heretofore furnished to Lender, no material adverse change has occurred in the financial condition of Guarantor, nor, except as heretofore disclosed in writing to Lender, has Guarantor incurred any material liability, direct or indirect, fixed or contingent; (g) after giving effect to this Guaranty, Guarantor is solvent, is not engaged or about to engage in business or a transaction for which the property of Guarantor is an unreasonably small capital, and does not intend to incur or believe that it will incur debts that will be beyond its ability to pay as such debts mature; (h) Guarantor has read and fully understands the provisions contained in the Note, the Mortgage, the Environmental Indemnity Agreement and the other Loan Documents. No Loan Documents or other document, certificate or statement (including, without limitation, any financial statements provided to Lender by Guarantor) furnished to Lender by or on behalf of Guarantor contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained herein and therein not misleading. Guarantor acknowledges that all such statements, representations and warranties shall be deemed to have been relied upon by Lender as an inducement to make the Loan to Borrower. Guarantor's representations, warranties and covenants are a material inducement to Lender to enter into the other Loan Documents shall survive the execution hereof and any bankruptcy, foreclosure, transfer of security or other event affecting Borrower, Guarantor, any other party, or any security for all or any part of the Guaranteed Obligations.

Section 14. Notices.

All notices from the Guarantor to Lender and Lender to Guarantor required or permitted by any provision of this Guaranty shall be in writing and sent by registered or certified mail or nationally recognized overnight delivery service and addressed as follows:

TO LENDER:

EF SBC 2015-2 LLC
53 Forest Avenue
Old Greenwich, CT 06870

TO GUARANTOR:

ARON PURETZ

ORON ZARUM

Such addresses may be changed by such notice to the other party. Notice given as hereinabove provided shall be deemed given on the date of its deposit in the United States Mail and, unless sooner actually received, shall be deemed received by the party to whom it is addressed on the third calendar day following the date on which said notice is deposited in the mail, or if a courier system is used, on the date of delivery of the notice.

Section 15. Cumulative Rights.

All of the rights and remedies of Lender under this Guaranty and the other Loan Documents are cumulative of each other and of any and all other rights at law or in equity, and the exercise by Lender of any one or more of such rights and remedies shall not preclude the simultaneous or later exercise by Lender of any or all such other rights and remedies. No single or partial exercise of any right or remedy shall exhaust it or preclude any other or further exercise thereof, and every right and remedy may be exercised at any time and from time to time. No failure by Lender to exercise, nor delay in exercising, any right or remedy shall operate as a waiver of such right or remedy or as a waiver of any Event of Default. No notice to or demand on Guarantor in any case shall of itself entitle Guarantor to any other or further notice or demand in similar or other circumstances. No provision of this Guaranty or any right or remedy of Lender with respect hereto, or any default or breach, can be waived, nor can this Guaranty or Guarantor be released or discharged in any way or to any extent, except specifically in each case by a writing intended for that purpose (and which refers specifically to this Guaranty) executed and delivered by Lender to Guarantor.

Section 16. Term of Guaranty.

This Guaranty shall continue in effect until all the Guaranteed Obligations and all of the obligations of Guarantor to Lender under this Guaranty are fully and finally paid, performed and discharged and are not subject to any bankruptcy preference period or any other disgorgement.

Section 17. Subrogation.

Guarantor shall not have any right of subrogation under any of the Loan Documents or any right to participate in any security for the Guaranteed Obligations or any right to reimbursement, exoneration, contribution, indemnification or any similar rights, until the Guaranteed Obligations have been fully and finally paid, performed and discharged in accordance with Section 16 above, and Guarantor hereby waives all of such rights.

Section 18. Financial Statements and Tax Returns.

Within sixty (60) days after the end of each calendar year or upon Lender's request, whichever is

earlier, Guarantor shall supply Lender with (i) an annual personal financial statement, together with bank and brokerage statements for the prior calendar year, all in forms in accordance with Guarantor's normal and customary practices if based upon standard or generally accepted accounting principles or reasonably acceptable to Lender in its reasonable discretion, and (ii) such supporting documentation as Lender reasonably requests. In addition, within forty five (45) days of filing, Guarantor shall supply Lender with a copy of its annual tax return, together with any K-1 statements for the prior year; or, if an extension is filed for any tax return, within forty five (45) days after any permitted extension date.

Section 19. No Transfer of Assets.

Guarantor shall not, during the term of the Loan, transfer any material portion of his/her assets unless such transfer is: (a) in the ordinary course of Guarantor's business, for fair market value and such fair market value is given to Guarantor, in his/her sole name, and such transfer will not have a material adverse effect on the financial condition of Guarantor and/or his/her ability to perform his/her obligations hereunder, as determined by Lender in its sole and absolute discretion; or (b) to any immediate family member, any trust for the benefit of Guarantor and/or its immediate family members and/or any corporation, partnership or other entity the majority of which is owned by Guarantor (or its immediate family members) as long as Guarantor otherwise maintains assets sufficient to repay the Loan as determined by Lender in its sole and absolute discretion.

Section 20. Time of Essence.

Time shall be of the essence in this Guaranty with respect to all of Guarantor's obligations hereunder.

Section 21. Entire Agreement; Counterparts; Construction.

This Guaranty embodies the entire agreement between Lender and Guarantor with respect to the guaranty by Guarantor of the Guaranteed Obligations. This Guaranty supersedes all prior agreements and understandings, if any, with respect to the guaranty by Guarantor of the Guaranteed Obligations. This Guaranty shall be effective upon execution by Guarantor and delivery to Lender. This Guaranty may not be modified, amended or superseded except in a writing signed by Lender and Guarantor referencing this Guaranty by its date and specifically identifying the portions hereof that are to be modified, amended or superseded. This Guaranty has been executed in a number of identical counterparts, each of which shall be deemed an original for all purposes and all of which constitute, collectively, one agreement. As used herein, the words "include" and "including" shall be interpreted as if followed by the words "without limitation."

Section 22. Intentionally Deleted.

Section 23. WAIVER OF JURY TRIAL.


GUARANTOR AND LENDER HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT ANY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS GUARANTY AND ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HERewith, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY. THIS PROVISION IS A MATERIAL INDUCEMENT FOR LENDER ENTERING INTO THIS AGREEMENT.

THE LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

[CONTINUES ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, Guarantor has duly executed this Guaranty as of the date first written above.

GUARANTOR:




ARON PURETZ

STATE OF NY

COUNTY OF Coc

The foregoing instrument was acknowledged before me this 26th day of August, 2020, by ARON PURETZ, who is personally known to me or who has produced NY Drivers License (type of identification) as identification.



Signature of person taking acknowledgment

Yehudis Zarum

Name of acknowledger typed, printed or stamped

Notary Public Yehudis S. Zarum
Title or rank Notary Public
State of New Jersey
My Commission Expires August 15, 2021

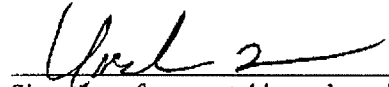
GUARANTOR:


ORON ZARUM

STATE OF NY

COUNTY OF Orange

The foregoing instrument was acknowledged before me this 26th day of August, 2020, by ORON ZARUM, who is personally known to me or who has produced NY DRIVER License (type of identification) as identification.


Signature of person taking acknowledgment

Yehuda S. Zarum
Name of acknowledger typed, printed or stamped

Notary Public
Title or rank

Yehuda S. Zarum
Notary Public
State of New Jersey
My Commission Expires August 15, 2021

EXHIBIT 7

(Above Space for Recorder's Use)

**ASSIGNMENT OF OPEN-END MORTGAGE, SECURITY AGREEMENT AND
FIXTURE FILING AND RELATED LOAN DOCUMENTS**

**THIS INSTRUMENT PREPARED BY
AND AFTER RECORDING RETURN TO:**

**SAUL EWING ARNSTEIN & LEHR
ATTN: DAVID A. YONTZ
161 N. CLARK STREET, SUITE 4200
CHICAGO, ILLINOIS 60601**

**Addresses: See Exhibit B attached hereto
Parcel Numbers: See Exhibit B attached hereto**

**ASSIGNMENT OF OPEN-END MORTGAGE, SECURITY AGREEMENT AND
FIXTURE FILING AND RELATED LOAN DOCUMENTS**

This Assignment of Open-End Mortgage, Security Agreement and Fixture Filing and Related Loan Documents (this "Assignment") by EF SBC 2015-2 LLC, a Delaware limited liability company, having an address at 53 Forest Avenue, Old Greenwich, Connecticut 06870 ("Assignor") is made in favor of EFM TRANSFER AGENT LLC, a Delaware limited liability company, having an address at 53 Forest Avenue, Old Greenwich, Connecticut 06870 ("Assignee").

WITNESSETH:

That for good and valuable consideration, the receipt of which is hereby acknowledged, Assignor does hereby assign, without recourse, representation or warranty, to Assignee all of Assignor's right, title, and interest in and to the following instruments:

Open-End Mortgage, Security Agreement and Fixture Filing executed by APEX COLONIAL OH LLC, a Delaware limited liability company ("Borrower") in favor of Assignor, dated August 28, 2020 and recorded on August 28, 2020 with the Franklin County Recorder for Franklin County, Ohio (the "Recorder") as Instrument Number 202008280128328;

Assignment of Leases and Rents executed by Borrower in favor of Assignor, dated August 28, 2020 and recorded on August 28, 2020 with the Recorder as Instrument Number 202008280128329;

Guaranty of Payment and Performance executed by each of ARON PURETZ and ORON ZARUM in favor of Assignor, dated August 28, 2020; and

Any and all other documents evidencing, securing or otherwise related to the loan evidenced by that certain Promissory Note dated August 28, 2020 in the original stated principal amount of \$15,500,000.00 executed by Borrower in favor of Assignor (all such documents, collectively the "Loan Documents"), and secured by, amongst other things, that certain real property located in Franklin County, Ohio, as legally described on Exhibit "A" attached hereto and made a part hereof.

TOGETHER with all rights, proceeds, interest, income and all other sums of money, principal, interest, or otherwise now or hereafter arising out of or in connection with the Loan Documents.

TO HAVE AND TO HOLD the same unto Assignee and to the successors, legal representatives and assigns of Assignee forever.

This Assignment is made without recourse, representations and warranties, express or implied.

IN WITNESS WHEREOF, Assignor has caused this Assignment to be executed effective as of September __, 2020.

ASSIGNOR:

EF SBC 2015-2 LLC, a Delaware limited liability company

By: Ellington Financial Management LLC, a Delaware limited liability company, its Manager

By: Katherine Meagher
Name: Katherine Meagher
Title: Authorized Signatory

STATE OF CONNECTICUT }
 } SS.
COUNTY OF FAIRFIELD }

On the 23rd day of September, 2020, before me, the undersigned notary public, personally appeared Katherine Meagher, the Authorized Signatory of Ellington Financial Management LLC, a Delaware limited liability company, the Manager of EF SBC 2015-2 LLC, a Delaware limited liability company and proved to me through satisfactory evidence of identification, being (check whichever applies): ☐ driver's license or other state or federal governmental document bearing a photographic image, ☐ oath or affirmation of a credible witness known to me who knows the above signatory, or ☐ my own personal knowledge of the identity of the signatory, to be the person whose name is signed on the preceding Assignment of Open-End Mortgage, Security Agreement and Fixture Filing and Related Loan Documents, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that she signed it voluntarily for its stated purpose in the aforesaid capacity as Authorized Signatory of Assignor.

Maud Susanna Turnbull

Notary Public

My commission expires:

Maud Susanna Turnbull
NOTARY PUBLIC
State of Connecticut
My Commission Expires 4/30/2023

ACCEPTANCE BY ASSIGNEE

ASSIGNEE:

EFM TRANSFER AGENT LLC,
a Delaware limited liability company

By: Ellington Financial Management LLC, a
Delaware limited liability company, its
Manager

By: Katherine Meagher
Name: Katherine Meagher
Title: Authorized Signatory

STATE OF CONNECTICUT }
 } SS.
COUNTY OF FAIRFIELD }

On the 23rd day of September, 2020, before me, the undersigned notary public, personally appeared Katherine Meagher, the Authorized Signatory of Ellington Financial Management LLC, a Delaware limited liability company, the Manager of EFM Transfer Agent LLC, a Delaware limited liability company and proved to me through satisfactory evidence of identification, being (check whichever applies): ☐ driver's license or other state or federal governmental document bearing a photographic image, ☐ oath or affirmation of a credible witness known to me who knows the above signatory, or ☐ my own personal knowledge of the identity of the signatory, to be the person whose name is signed on the preceding Assignment of Open-End Mortgage, Security Agreement and Fixture Filing and Related Loan Documents, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that she signed it voluntarily for its stated purpose in the aforesaid capacity as Authorized Signatory of Assignee.

Maud Susanna Turnbull

Notary Public

My commission expires:

Maud Susanna Turnbull
NOTARY PUBLIC
State of Connecticut
My Commission Expires 4/30/2023

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

All that certain lot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the City of Columbus, County of Franklin, State of Ohio.

Tract I:

Being located in Section 17, Township 12, Range 21, Refugee Lands, more particularly described as follows:

Beginning at a 3/4-inch iron pipe found in the Western right-of-way line of Rand Avenue and at the Southeastern corner of Lot 50 as the same is shown upon the recorded Plat of "Barnett Heights Amended", of record in Plat Book 27, Page 74;

Thence with the Westerly right-of-way line of Rand Avenue, as the same is shown upon the recorded Plat of "Dedication of Rand Avenue and Allendale Drive", of record in Plat Book 32, Page 104, the following Eight (8) courses:

- 1) South 3 deg. 32' 06" West, a distance of 120.35 feet to a found 5/8-inch rebar (bent);
- 2) South 14 deg. 21' 51" West, a distance of 28.66 feet to a set 3/4-inch iron pipe;
- 3) South 3 deg. 53' 06" West, a distance of 404.97 feet to found 5/8-inch rebar at a point of curvature;
- 4) Thence with a curve to the left, having a radius of 230.00 feet, an arc length of 100.42 feet, a central angle of 25 deg. 00' 53" and a chord which bears South 8 deg. 33' 59" East, a chord distance of 99.62 feet to a set 3/4-inch iron pipe at the point of reverse curvature;
- 5) Thence with a curve to the right, having a radius of 170.00 feet, an arc length of 72.74 feet, a central angle of 24 deg. 31' 02" and a chord which bears South 8 deg. 48' 55" East, a chord distance of 72.19 feet to a found 5/8-inch rebar at the point of tangency;
- 6) South 3 deg. 26' 36" West, a distance of 55.00 feet to a found 5/8-inch rebar;
- 7) South 13 deg. 26' 41" West, a distance of 28.79 feet to a found 5/8-inch rebar;
- 8) South 3 deg. 26' 36" West, a distance of 116.81 feet to a found 3/4-inch iron pipe at the intersection of the Westerly right-of-way line of said Rand Avenue and the Northerly right-of-way line of Livingston Avenue;

Thence North 86 deg. 30' 00" West, along the North right-of-way line of Livingston Avenue, a distance of 437.31 feet to a found 3/4-inch pinch top at the Southeast corner of a 0.792 acre tract, conveyed to Katja R. Turner, of record in Instr. No. 200507080134653;

Thence North 3 deg. 17' 48" East, with the Easterly line of said 0.792 acre tract, and the Easterly line of a 1.95 acre tract, conveyed to City of Columbus, Ohio, of record in D.B. 2452, Page 511, and the Easterly line of a 3.405 acre tract, conveyed to City of Columbus, Ohio, of record in Instr. No. 200602100027249, a distance of 821.60 feet to a set 3/4 iron pipe in the Southerly line of a 0.364 acre tract, conveyed to Patricia A. Johnson, of record in O.R. 14527 H09;

Thence South 86 deg. 44' 14" East, with the Southerly line of said 0.364 acre tract, and the Southerly line of a 0.364 acre tract, conveyed to Anena Moore, of record in O.R. 07763 B16, and the Southerly line of a 0.343 acre tract, conveyed to Robert E. & Veronica J. Owens, of record in O.R. 09708 J01, and the Southerly line of a 0.364 acre tract, conveyed to Charlene Peachey & Geraldine Peachey Allen, of record in Instr. No. 200508160116684, and the Southerly line of a 0.130 acre tract, conveyed to Victoria L. Jones, of record in Instr. No. 200001070005865, a distance of 285.03 feet to a found 5/8-inch rebar at the South Easterly corner of said 0.130 acre tract;

Thence North 4 deg. 08' 56" East, with the Easterly line of said 0.130 acre tract, a distance of 99.52 feet to a found 5/8-inch rebar in the Easterly line of said 0.130 acre tract, and at the Southwest corner of said Lot 50 as the same is shown upon the recorded Plat of "Barnett Heights Amended", of record in Plat Book 32, Page 104;

Thence South 86 deg. 15' 31" East, with the Southerly line of said Lot 50, a distance of 150.85 feet, returning to the point of Beginnings, and containing 8.272 acres of land more or less, being subject to all restrictions, easements, and rights-of-way of previous record.

Basis of Bearings:

The centerline of Livingston Avenue was assigned a bearing of South 86 deg. 30' East as shown on the record plat of Berwick Arms, of record in Plat Book 34, Page 79.

Tract II:

Being located in Section 17, Township 12, Range 21, Refugee Lands, more particularly described as follows:

Beginning at a 3/4-inch iron pipe found in the Southerly right-of-way line of Allendale Drive and at the Northwest corner of Lot 12, as the same is shown upon the recorded Plat of "Berwick Arms", of record in Plat Book 34, Page 79;

Thence South 3 deg. 38' 36" West, with the Westerly line of said Lot 12, a distance of 120.00 feet to a found 3/4-inch iron pipe;

Thence South 86 deg. 21' 24" East, with the Southerly line of said Lot 12 and the Southerly line of Lot 13 and Lot 14, as the same is shown upon the recorded plat of "Berwick Arms", of record in Plat Book 34, Page 79, a distance of 167.26 feet to a found 3/4-inch iron pipe at the Southwesterly corner of Reserve "D" a 0.396 acre tract, (by survey), conveyed to Colonial Village Berwick, LLC, of record in Instr. No. 200605020083518;

Thence South 34 deg. 38' 34" East, with the Southerly line of said 0.396 acre tract, a distance of 117.21 feet to a set 3/4 iron pipe at the Northwesterly corner of Lot 15, as the same is shown upon the recorded Plat of "Berwick Arms", of record in Plat Book 34;

Thence South 3 deg. 26' 36" West, with the Westerly line of Lots 15 through 23, inclusive, as the same is shown upon the recorded Plat of "Berwick Arms", of record in Plat Book 34, Page 79, a distance of 537.65 feet to a found 3/4-inch pinch top at the Southwest corner of said Lot 23, and in the Northerly right-of-way line of Livingston Avenue.

Thence North 86 deg. 30' 00" West, along the North right-of-way line of Livingston Avenue, a distance of 525.55 feet to a found 3/4-inch iron pipe at the intersection of the North right-of-way of Livingston Avenue and the East right-of-way line of Rand Avenue;

Thence with the Easterly right-of-way line of Rand Avenue, as the same is shown upon the recorded Plat of "Dedication of Rand Avenue and Allendale Drive", of record in Plat Book 32, Page 104, the following Six (6)

courses:

- 1) North 3 deg. 26' 36" East, a distance of 116.88 feet to a found 5/8-inch rebar;
- 2) North 6 deg. 33' 29" West, a distance of 28.79 feet to a found 5/8-inch rebar;
- 3) North 3 deg. 26' 36" East, a distance of 55.00 feet to a set 3/4-inch iron pipe at a point of curvature;
- 4) Thence with a curve to the left, having a radius of 230.00 feet, an arc length of 98.42 feet, a central angle of 24 deg. 31' 02" and a chord which bears North 8 deg. 48' 55" West, a chord distance of 97.67 feet to a found 5/8-inch rebar iron pin at a point of reverse curvature;
- 5) Thence with a curve to the right, having a radius of 170.00 feet, an arc length of 73.88 feet, a central angle of 24 deg. 53' 37" and a chord which bears North 8 deg. 37' 37" West, a chord distance of 73.28 feet to a set 3/4-inch iron pipe at the point of tangency;
- 6) North 3 deg. 53' 06" East, a distance of 373.82 feet to a found 5/8-inch rebar at a point of curvature;

Thence with a curve to the right, having a radius of 10.00 feet, an arc length of 15.67 feet, a central angle of 89 deg. 45' 30" and a chord which bears North 48 deg. 45' 51" East, a chord distance of 14.11 feet, to a found 5/8-inch rebar, at the point of tangency and being in the Southerly right-of-way of said Allendale Drive;

Thence South 86 deg. 21' 24" East, along the Southerly right-of-way line of Allendale Drive, a distance of 314.56 feet, returning to the point of Beginnings, and containing 8.758 acres of land more or less, being subject to all restrictions, easements, and right-of-way of previous record.

Basis of Bearings:

The centerline of Livingston Avenue was assigned a bearing of South 86 deg. 30' East as shown on the record Plat of Berwick Arms, of record in Plat Book 34, Page 79.

Tract III:

Being located in Section 17, Township 12, Range 21, Refugee Lands, more particularly described as follows:

Beginning at a 3/4-inch iron pipe found in the Northerly right-of-way line of Allendale Drive and at the Southwest corner of Lot 11, as the same is shown upon the recorded Plat of "Berwick Arms", of record in Plat Book 34, Page 79;

Thence North 86 deg. 21' 24" West, with the Northerly right-of-way line of Allendale Drive as the same is shown upon the recorded Plat of "Dedication of Rand Avenue and Allendale Drive", of record in Plat Book 32, Page 104, a distance of 259.05 feet to a found 5/8-inch rebar at a point of curvature;

Thence with a curve to the right, having a radius of 10.00 feet, an arc length of 15.69 feet, a central angle of 89 deg. 53' 30" and a chord which bears North 41 deg. 24' 39" West, a chord distance of 14.13 feet to a found 5/8-inch rebar, at the point of tangency and being in the Easterly right-of-way of said Rand Avenue, as the same is shown upon the recorded Plat of "Dedication of Rand Avenue and Allendale Drive", of record in Plat Book 32, Page 104;

Thence North 3 deg. 32' 06" East, along the Easterly right-of-way line of said Rand Avenue, a distance of 110.31 feet to a found 3/4-inch iron pipe at the Southwest corner of Lot 49, as the same is shown upon the recorded Plat of "Barnett Heights Amended", of record in Plat Book 27, Page 74;

Thence South 86 deg. 15' 31" East, with the Southerly line of said Lot 49, and the Southerly line of Lot 42, as the same is shown upon the recorded Plat of "Barnett Heights Amended", of record in Plat Book 27, Page 74, a distance of 269.26 feet to a found 3/4-inch iron pipe at the Northwest corner of said Lot 11;

Thence South 3 deg. 38' 36" West, with the Westerly line of said Lot 11, a distance of 119.83 feet, returning to the point of Beginning, and containing 0.920 acres of land, more or less, being subject to all restrictions, easements, and right-of-way of previous records.

Basis of Bearings:

The centerline of Livingston Avenue was assigned a bearing of South 86 deg. 30' East as shown on the record plat of Berwick Arms, of record in Plat Book 34, Page 79.

Tract IV:

Being located in Section 17, Township 12, Range 21, Refugee Lands, and being all of Reserve "D", as the same is shown upon the recorded Plat of "Berwick Arms", of record in Plat Book 34, Page 79, more particularly described as follows:

Beginning at a 3/4-inch iron pipe found at the Southeast corner of Lot 14, as the same is shown upon the recorded Plat of "Berwick Arms", of record in Plat Book 34, Page 79;

Thence North 33 deg. 28' 10" East, with the Easterly line of said Lot 14, a distance of 119.46 feet to a set 3/4-inch iron pipe, at the Northeast corner of said Lot 14 and in the Southerly right-of-way line of Allendale Drive, as the same is shown upon the recorded Plat of "Dedication of Rand Avenue and Allendale Drive", of record in Plat Book 32, Page 104;

Thence with a curve to the right, having a radius of 125.00 feet, an arc length of 48.10 feet, a central angle of 22 deg. 02' 54" and a chord which bears South 45 deg. 40' 01" East, a chord distance of 47.81 feet to set 3/4-inch iron pipe at a point of tangency;

Thence South 34 deg. 38' 34" East, along the Southerly right-of-way line of Allendale Drive, a distance of 113.06 feet to a set 3/4-inch iron pipe at a point of curvature;

Thence with a curve to the right, having a radius of 125.00 feet, an arc length of 9.08 feet, a central angle of 4 deg. 09' 48", and a chord which bears South 32 deg. 33' 41" East, a chord distance of 9.08 feet, to a set 3/4-inch iron pipe, at the Northeast corner of Lot 15, as the same is shown upon the recorded Plat of "Berwick Arms", of record in Plat Book 34, Page 79;

Thence South 58 deg. 52' 15" West, with the Northerly line of said Lot 15, a distance of 119.90 feet, to a set 3/4-inch iron pipe, at the Northwest corner of said Lot 15 and in the Easterly line of an 8.758 acre tract, conveyed to Colonial Village Berwick, LLC, of record in Instr. No. 200605020083518.

Thence North 34 deg. 38' 34" West, with the Easterly line of said 8.758 acre tract, a distance of 117.21 feet, returning to the point of Beginning, and containing 0.386 acres of land, more or less, being subject to all restrictions, easements, and rights-of-way of previous record.

Basis of Bearings:

The centerline of Livingston Avenue was assigned a bearing of South 86 deg. 30' East as shown on the record Plat of Berwick Arms, of record in Plat Book 34, Page 79.

Tract V (Parcel I):

Being located in Section 17, Township 12, Range 21, Refugee Lands, and being all of Lot 11, as the same is shown upon the recorded Plat of "Berwick Arms", of record in Plat Book 34, Page 79, more particularly described as follows:

Beginning at a 3/4-inch iron pipe found in the Northerly right-of-way line of Allendale Drive as the same is shown upon the recorded Plat of "Dedication of Rand Avenue and Allendale Drive", of record in Plat Book 32, Page 104 and at the Southwest corner of said Lot 11;

Thence North 3 deg. 38' 36" East, with the Westerly line of said Lot 11, a distance of 119.83 feet to a found 3/4-inch iron pipe in the Southerly line of Lot 42, as the same is shown upon the recorded Plat of "Barnett Heights Amended", of record in Plat Book 27, Page 74;

Thence South 86 deg. 15' 31" East, with the Southerly line of said Lot 42, a distance of 65.00 feet to a found 3/4-inch pinch top at the Southeast corner of said Lot 42 and being in the Westerly right-of-way line of Olney Drive;

Thence South 3 deg. 38' 36" West, with the Westerly right-of-way line of Olney Drive, a distance of 109.71 feet to a set 3/4-inch iron pipe at a point of curvature;

Thence with a curve to the right, having a radius of 10.00 feet, an arc length of 15.71 feet, a central angle of 90 deg. 00' 00" and a chord which bears South 48 deg. 38' 36" West, a chord distance of 14.14 feet to a set 3/4-inch iron pipe at a point of tangency in the Northerly right-of-way line of said Allendale Drive;

Thence North 86 deg. 21' 24" West, with the said Northerly right-of-way line of Allendale Drive, a distance of 55.00 feet, returning to the point of Beginning, and containing 0.178 acres of land, more or less, being subject to all restrictions, easements, and right-of-way, of previous records.

Basis of Bearings:

The centerline of Livingston Avenue was assigned a bearing of South 86 deg. 30' East as shown on the record Plat of Berwick Arms, of record in Plat Book 34, Page 79.

Tract V (Parcel II):

Being located in Section 17, Township 12, Range 21, Refugee Lands, and being all of Lots 1 through 10, inclusive, together with Reserve "B" and Reserve "C", as the same is shown upon the recorded Plat of "Berwick Arms", of record in Plat Book 34, Page 79, more particularly described as follows:

Beginning at a 3/4-inch pinch top found in the Easterly right-of-way line of Olney Drive and at the Southwesterly corner of Lot 41, as the same is shown upon the recorded Plat of "Barnett Heights Amended", of record in Plat Book 27, Page 74;

Thence South 86 deg. 15' 31" East, with the Southerly line of said Lot 41, and the Southerly line of a 0.616 acre tract (by survey), conveyed to Colonial Village Berwick, LLC, of record in Instr. No. 200605020083518, a distance of 323.47 feet to a set 3/4 iron pipe, in the Westerly right-of-way line of New York Central R.R.;

Thence South 34 deg. 36' 28" East, with the Westerly right-of-way line of New York Central R.R., a distance of 284.14 feet to a found 3/4 iron pipe in the Westerly right-of-way line of New York Central R.R. and at the Northwest corner of a 2.868 acre tract (by survey), conveyed to Colonial Village Berwick, LLC, of record in Instr.

No. 200701110006858;

Thence South 3 deg. 26' 36" West, with the Westerly line of said 2.868 acre tract (by survey), a distance of 694.80 feet to a set 3/4 iron pipe, at the Southwest corner of the said 2.868 acre tract, and being in the Northerly right-of-way line of Livingston Avenue;

Thence North 86 deg. 30' 00" West, along the North right-of-way line of Livingston Avenue, a distance of 125.02 feet to a set 3/4 iron pipe at a point of curvature;

Thence with a curve to the right, having a radius of 20.00 feet, an arc length of 31.40 feet, a central angle of 89 deg. 56' 36" and a chord which bears North 41 deg. 31' 42" West, a chord distance of 28.27 feet to a set 3/4 iron pipe at a point of tangency in the Easterly right-of-way line of Brookway Road;

Thence with the Easterly right-of-way line of Brookway Road the following Six (6) courses:

1) North 3 deg. 26' 36" East, a distance of 516.11 feet, to a found 5/8-inch rebar at a point of curvature;

2) Thence with a curve to the left, having a radius of 175.00 feet, an arc length of 116.33 feet, a central angle of 38 deg. 05' 10" and a chord which bears North 15 deg. 35' 59" West, a chord distance of 114.20 feet, to a found 5/8-inch rebar at a point of tangency;

3) North 34 deg. 36' 34" West, a distance of 113.06 feet, to found 5/8-inch rebar at a point of curvature;

4) Thence with a curve to the left, having a radius of 175.00 feet, an arc length of 157.95 feet, a central angle of 51 deg. 42' 50" and a chord which bears North 60 deg. 29' 59" West, a chord distance of 152.64 feet, to a set 3/4 iron pipe at a point of tangency;

5) North 86 deg. 21' 24" West, a distance of 99.89 feet, to a set 3/4 iron pipe at a point of curvature;

6) Thence with a curve to the right, having a radius of 10.00 feet, an arc length of 15.71 feet, a central angle of 90 deg. 00' 00" and a chord which bears North 41 deg. 21' 24" West, a chord distance of 14.14 feet, to a set 3/4 iron pipe at a point of tangency in the Easterly right-of-way line of Olney Drive;

Thence North 3 deg. 36' 36" East, with the said Easterly right-of-way line of Olney Drive, a distance of 109.63 feet, returning to the point of Beginning, and containing 3.978 acres of land, more or less, being subject to all restrictions, easements, and rights-of-ways of previous record.

Basis of Bearings:

The centerline of Livingston Avenue was assigned a bearing of South 86 deg. 30' East as shown on the record Plat of Berwick Arms, of record in Plat Book 34, Page 79.

Tract VI (Parcel I):

Being located in Section 17, Township 12, Range 21, Refugee Lands, and being all of Lots 12 through 14, inclusive, as the same is shown upon the recorded Plat of "Berwick Arms", of record in Plat Book 34, Page 79, more particularly described as follows:

Beginning at a 3/4 iron pipe found in the Southerly right-of-way line of Allendale Drive and at the Northwest corner of said Lot 12;

Thence South 86 deg. 21' 24" East, with the said Southerly right-of-way line of Allendale Drive, a distance of

164.83 feet to a found 5/8 rebar at a point of curvature;

Thence with a curve to the right, having a radius of 125.00 feet, an arc length of 64.72 feet, a central angle of 29 deg. 39' 57" and a chord which bears South 71 deg. 31' 26" East, a chord distance of 64.00 feet, a set 3/4-inch iron pipe at the Northwest corner of a 0.396 acre tract, conveyed to Colonial Village Berwick, LLC, of record in Instr. No. 200605020083518;

Thence South 33 deg. 29' 10" West, with the Westerly line of said 0.396 acre tract, a distance of 119.46 feet, to a found 3/4 iron pipe, in the Easterly line of a 8.758 acre tract, conveyed to Colonial Village Berwick, LLC, of record in Instr. No. 200605020083518;

Thence North 86 deg. 21' 24" West, along the Northerly line of said 8.758 acre tract, a distance of 167.26 feet to a found 3/4 iron pipe at the Southwest corner of said Lot 12;

Thence North 3 deg. 38' 35" East, along the Westerly line of said Lot 12, a distance of 120.00 feet, returning to the point of Beginning, and containing 0.546 acres of land, more or less, being subject to all restrictions, easements, and rights-of-ways of previous record.

Basis of Bearings:

The centerline of Livingston Avenue was assigned a bearing of South 86 deg. 30' East as shown on the record Plat of Berwick Arms, of record in Plat Book 34, Page 79.

Tract VI (Parcel II):

Being located in Section 17, Township 12, Range 21, Refugee Lands, and being all of Lots 15 through 23, inclusive, as the same is shown upon the recorded Plat of "Berwick Arms", of record in Plat Book 34, Page 79, more particularly described as follows:

Beginning at a 3/4 iron pipe set in the Westerly right-of-way line of Brookway Road and at the Northeast corner of said Lot 15, and at the Southeasterly corner of a 0.396 acre tract, conveyed to Colonial Village Berwick, LLC, of record in Instr. No. 200605020083518;

Thence with the Westerly right-of-way line of said Brookway Road, the following Three (3) courses;

1) Thence with a curve to the right, having a radius of 125.00 feet, an arc length of 74.01 feet, a central angle of 33 deg. 55' 24" and a chord which bears South 13 deg. 31' 06" East, a chord distance of 72.93 feet to a found 5/8-inch rebar at a point of tangency;

2) South 3 deg. 26' 36" West, a distance of 516.03 feet to a set 3/4-inch iron pipe at a point of curvature;

3) Thence with a curve to the right, having a radius of 20.00 feet, an arc length of 31.44 feet, a central angle of 90 deg. 03' 24" and a chord which bears South 48 deg. 28' 18" West, a chord distance of 28.30 feet to set 3/4-inch iron pipe at a point of tangency, in the Northerly right-of-way line of Livingston Avenue;

Thence North 86 deg. 30' 00" West, along the North right-of-way line of Livingston Avenue, a distance of 99.98 feet to a found 3/4-inch pinch top at the Southeast corner of an 8.758 acre tract, conveyed to Colonial Village Berwick, LLC, of record in Instr. No. 200605020083518;

Thence North 3 deg. 26' 36" East, with the Easterly line of said 8.758 acre tract, a distance of 537.65 feet to a set 3/4-inch iron pipe, at the Northwest corner of said Lot 15 and at the Southwest corner of said 0.396 acre tract;

Thence North 58 deg. 52' 15" East, with the Southerly line of said 0.396 acre tract, a distance of 119.90 feet, returning to the point of Beginning, and containing 1.579 acres of land more or less, being subject to all restrictions, easements, and rights-of-ways of previous record.

Basis of Bearings:

The centerline of Livingston Avenue was assigned a bearing of South 86 deg. 30' East as shown on the record Plat of Berwick Arms, of record in Plat Book 34, Page 79.

Tract VII:

Being located in Section 17, Township 12, Range 21, Refugee Lands, and being all of Reserve "A", as the same is shown upon the recorded Plat of "Berwick Arms", of record in Plat Book 34, Page 79, more particularly described as follows:

Beginning at a 3/4-inch iron pipe set, at the Southeasterly corner of Lot 41, as the same is shown upon the recorded Plat of "Barnett Heights Amended", of record in Plat Book 27, Page 74, and in the Northerly line of a 3.978 acre tract, conveyed to Colonial Village Berwick, LLC, of record in Instr. No. 200605020083518;

Thence North 16 deg. 33' 39" West, with the Easterly line of Lots 36 through 41, inclusive, as the same is shown upon the recorded Plat of "Barnett Heights Amended", of record in Plat Book 27, Page 74, a distance of 369.86 feet to a found 3/4 iron pipe at an angle point in said Lot 36;

Thence South 83 deg. 58' 10" East, with the Easterly line of said Lot 36, a distance of 4.49 feet to a found 3/4 iron pipe in the Westerly right-of-way line of New York Central R.R.;

Thence South 34 deg. 36' 26" East, with the said Westerly right-of-way line of New York Central R.R., a distance of 442.08 feet, to a 3/4-inch iron pipe set at the Northeast corner of said 3.978 acre tract;

Thence North 86 deg. 15' 31" West, with the Northerly line of the said 3.978 acre tract, a distance of 150.44 feet, returning to the point of Beginning, and containing 0.616 acres of land, more or less, being subject to all restrictions, easements, and rights-of-way of previous record.

Basis of Bearings:

The centerline of Livingston Avenue was assigned a bearing of South 86 deg. 30' East as shown on the record Plat of Berwick Arms, of record in Plat Book 34, Page 79.

EXHIBIT B

LIST OF ADDRESSES AND PARCEL ID NUMBERS

A. ADDRESSES:

1300 Brookway Road, Columbus, OH 43227 and 1294 Brookway Road, Columbus, OH 43227 and 1288 Brookway Road, Columbus, OH 43227 and 1280 Brookway Road, Columbus, OH 43227 and 1272 Brookway Road, Columbus, OH 43227 and 1264 Brookway Road, Columbus, OH 43227 and 1256 Brookway Road, Columbus, OH 43227 and 1248 Brookway Road, Columbus, OH 43227 and 1240 Brookway Road, Columbus, OH 43227 and 1180 Olney Drive, Columbus, OH 43227 and 1179 Olney Drive, Columbus, OH 43227 and 3639 Allendale Drive, Columbus, OH 43227 and 3651 Allendale Drive, Columbus, OH 43227 and 3663 Allendale Drive, Columbus, OH 43227 and 1239 Brookway Road, Columbus, OH 43227 and 1247 Brookway Road, Columbus, OH 43227 and 1255 Brookway Road, Columbus, OH 43227 and 1263 Brookway Road, Columbus, OH 43227 and 1271 Brookway Road, Columbus, OH 43227 and 1279 Brookway Road, Columbus, OH 43227 and 1287 Brookway Road, Columbus, OH 43227 and 1295 Brookway Road, Columbus, OH 43227 and 1301 Brookway Road, Columbus, OH 43227 and 3668 Allendale Drive, Columbus, OH 43227 and 3666 Allendale Drive, Columbus, OH 43227 and 1228 Brookway Road, Columbus, OH 43227 and 1225 Brookway Road, Columbus, OH 43227 and 3727 Briggs Road, Columbus, OH 43228 and 1171 Rand Avenue, Columbus, OH 43227 and 3532 Rand Circle, Columbus, OH 43227 and 3557 Rand Circle, Columbus, OH 43227 and 3514 Rand Square, Columbus, OH 43227 and 1256 Rand Avenue, Columbus, OH 43227 and 1223 Berwick Arms Place, Columbus, OH 43227.

B. PARCEL ID NUMBERS:

Parcel:	Tax Identification Numbers:
1	010-134510
2	010-134511
3	010-134512
4	010-134513
5	010-134514
6	010-134515
7	010-134516
8	010-134517
9	010-134518
10	010-134519
11	010-134520
12	010-134521
13	010-134522
14	010-134523
15	010-134524
16	010-134525
17	010-134526
18	010-134527
19	010-134528
20	010-134529
21	010-134530
22	010-134531
23	010-134532
24	010-134533
25	010-134534
26	010-134535
27	010-134536
28	010-134570
29	010-137571
30	010-137572
31	010-137573
32	010-137574
33	010-137576
34	010-137577

EXHIBIT 8



JAMES V. MANIACE
Direct Dial: 614-334-6151
jmaniace@taftlaw.com

65 East State Street, Suite 1000
Columbus, OH 43215-4213
Tel: 614.221.2838 | Fax: 614.221.2007
taftlaw.com

June 29, 2021

VIA FEDERAL EXPRESS

Apex Colonial OH LLC
2365 Nostrand Avenue
Brooklyn, NY 11210

NOTICE OF DEFAULT AND RESERVATION OF RIGHTS

Re: Promissory Note (“Note”); Open-End Mortgage, Security Agreement and Fixture Filing (“Mortgage”); Environmental Compliance and Indemnity Agreement (“Environmental Agreement”); Guaranty of Payment and Performance (“Guaranty”); Pledge and Security Agreement (“Pledge”); Assignment of Leases and Rents (“Assignment”); collectively, the Note, Mortgage, Environmental Agreement, Guaranty, Pledge, and Assignment shall hereinafter be referred to as the “Loan Documents.”

Dear Sir or Madam:

Please be advised that our firm represents the EFM Transfer Agent, LLC (“Lender”) in connection with the Loan Documents, which were executed by Apex Colonial OH LLC (“Borrower”) on or about August 20, 2020. Capitalized terms not defined in this Notice of Default and Reservation of Rights shall have the same meaning as under the Loan Documents.

This letter constitutes formal notice from Lender that Events of Default have occurred under the Loan Documents, including, but not limited to:

- (1) Failure to make monthly payments under the Note. The Note is hereby accelerated, and \$15,562,932.38 is due and owing. A statement of account is attached hereto for your reference.
- (2) Failure to pay real estate taxes when due.
- (3) Commencement and continuation of litigation against Borrower by governmental authorities (Case No. 2021EVH060155, Franklin County Municipal Court, Environmental Division).
- (4) Attachment of various liens and encumbrances to the real property.

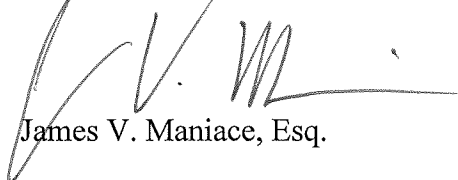
As a result of the Events of Default, Lender hereby exercises its rights under the Loan Documents to: (i) declare Borrower and Guarantors Aron Puretz and Oron Zarum (collectively, “Guarantors”) to be in default under the Loan Documents; (ii) begin charging the default interest rate on the outstanding balance due under the Note, effective as of June 11, 2021; (iii) freeze any remaining availability under the Note; and (iv) set off the balance in any deposit accounts maintained with Lender by Borrower.

If the total balance due under the Note (including, without limitation, all collection-related expenses incurred by the Lender) is not paid immediately, then Lender intends to: (i) enforce Lender's rights and remedies under the Loan Documents; and (ii) initiate litigation against Borrower and Guarantors to collect the full amount due under the Note, to foreclose the Mortgage, to seek the appointment of a receiver to, among other things, take possession and control of the real property, and to recover from Borrower and Guarantors all of the attorneys' fees and court costs incurred by Lender in enforcing its rights and remedies under the Loan Documents. We hope this proves unnecessary.

Lender expressly reserves all of its rights and/or remedies under the Loan Documents and/or applicable law, regardless of whether any of those rights and remedies are set forth in this Notice. Nothing in this Notice, or any delay on the part of Lender in exercising any of its rights and/or remedies under the Loan Documents or applicable law, shall constitute a waiver or modification of any of Lender's rights and/or remedies thereunder. Lender also reserves, without limitation, the right to accept partial payments made under the Note after the date of this Notice. Lender may apply, in its sole discretion, any partial payments made by Borrower or Guarantors in any manner. No acceptance by Lender of a partial payment under the Note shall constitute a renewal or extension of the Loan, a cure of any events of default under the Loan Documents, a reinstatement of the Loan, or a waiver or modification of any rights or remedies available to Lender under the Loan Documents or applicable law, including, without limitation, Lender's right to declare the entire outstanding balance under the Note to be immediately due and owing. No oral or written communications with Lender that any of Borrower or Guarantors may have had, or which they may have after the date of this letter, shall constitute an agreement by Lender to amend any terms of the Loan Documents or to forbear, in any manner or for any period of time, from the enforcement of Lender's rights and remedies under the Loan Documents or under applicable law, unless such communications are reflected in an agreement signed by Borrower and Lender.

Respectfully,

TAFT STETTINIUS & HOLLISTER LLP



James V. Maniace, Esq.

cc: Aron Poretz (**Via Federal Express**)
309 Miller Road
Lakewood, NJ 08701

Oron Zarum (**Via Federal Express**)
139 Ocean Ave., Ste. 5
Lakewood, NJ 08701

Katherine C. Ferguson, Esq. (**Via Email**)

Version #: 1
Quote Version: DRAFT
Quote Issued On: June 28, 2021
Quote Valid Through: June 16, 2021



To: Apex Colonial OH LLC

Re: Colonial Village
1256 Rand Ave
Columbus, OH 43227

Cohen Loan No. 330177029

We have prepared the following figures for the payoff that is to occur on June 16, 2021:

Parameters	Amount	Account
	\$ 15,500,000.00	Principal
04/01/21 thru 06/16/21 @ 8.25%	\$ 273,510.42	Regular Interest
05/11/21 thru 06/16/21 @ 15.75%	\$ 250,906.25	Default Interest
	\$ 250.00	Doc Processing Fee
	\$ 155,000.00	Exit Fee - 1%
	\$ 22,345.31	Late Charges
	\$ 10,000.00	Protective Advance Due Lender - Legal
	\$ (648,902.00)	Reserves - Cap Ex
	\$ (177.60)	Unapplied
	<u>\$ 15,562,932.38</u>	Total

All Funds must be received by 2:00 PM CT to receive same day credit.

You are still responsible for keeping your account current during the payoff process.

Your loan is not signed up for automatic ACH payments, and you will not be required to submit an automatic ACH cancellation request prior to payoff.

If applicable, escrow will be refunded under a separate cover.

Satisfactions and Note will be returned in the ordinary course of business.

Every effort has been made to ensure the informational accuracy of this Payoff Quote and, if applicable, all accompanying attachment(s). Please review the loan number, name of mortgagor, property address, and principal balance, and confirm this information agrees with your record of the loan. Notification is hereby given that, in the event of error or omission, the lender does not, in any way, prejudice its right and entitlement to all monies lawfully due it under the terms of the Mortgage, Note or related documents and provided that the loan documents contain no provisions that would prohibit prepayment. Mortgagor needs to review the loan documents for the existence of such provisions and be aware that this quote does not in any way alter or modify any of the terms therein.

Please have wired to the lender pursuant to the following wiring instructions:

Funds are to be wired to:	PNC Bank, N.A. (Pittsburgh, PA)
For credit to:	Situs Asset Management as Servicer
Account number:	1025481829
ABA routing number:	043000096
Reference:	330177029

EXHIBIT 9

**FRANKLIN COUNTY MUNICIPAL COURT
CIVIL DIVISION, 3RD FLOOR
375 SOUTH HIGH STREET
COLUMBUS, OHIO 43215**

EFM TRANSFER AGENT LLC c/o JONATHAN N OLIVITO
TAFT STETTINIUS & HOLLISTER LLP
65 EAST STATE ST., SUITE 1000
COLUMBUS, OH 43215

DATE ISSUED: AUGUST 4, 2021

STYLE: STATE EX REL vs. APEX COLONIAL OH LLC et al

CASE NO.: 2021 EVH 060155

TO: EFM TRANSFER AGENT LLC c/o JONATHAN N OLIVITO
TAFT STETTINIUS & HOLLISTER LLP
65 EAST STATE ST., SUITE 1000
COLUMBUS, OH 43215

NOTICE OF COURT ORDER

THE ABOVE NAMED PARTY IS HEREBY NOTIFIED THAT A COURT ORDER WAS FILED
AND JOURNALIZED AS INDICATED ON ORDER, WHICH STATES IN PERTINENT PART:

(SEE COPY OF ORDER ATTACHED)

LORI M. TYACK, CLERK

BY: CLERK 8111
DEPUTY CLERK
PHONE : 614-645-7220

A TRUE COPY OF THE FOREGOING WAS SENT TO THE ABOVE NAMED INDIVIDUAL
BY ORDINARY U.S. MAIL THIS DATE 080421.

IN THE FRANKLIN COUNTY MUNICIPAL COURT
FRANKLIN COUNTY, OHIO
ENVIRONMENTAL DIVISION

FILED

AUG - 4 2021

Lori M. Tyack, Clerk
By _____

STATE EX. REL
COLUMBUS CITY ATTORNEY
ZACH KLEIN

Relator - Plaintiff,

v.

APEX COLONIAL OH, LLC, et. al.

Respondents-Defendants.

Case No. 2021 EVH 60155

Judge Stephanie Mingo

STIPULATED ORDER FOR PERMANENT INJUNCTIVE RELIEF

Procedural History

This matter came before the Court upon Realtor-Plaintiff's Complaint for Preliminary and Permanent Injunctive Relief filed on April 14, 2021. A Preliminary Injunction Hearing was held before this Court on April 30, 2021. Plaintiff State ex rel. Klein ("Plaintiff") was represented by Assistant City Attorneys Tiara Ross and Sarah Pomeroy. The following Respondents-Defendants appeared represented by counsel, Kate Ferguson, Sean Mentel, Lindsay Nelson and Zachary Miller: Apex Colonial OH LLC, Apex Colonial Holdings LLC, Apex Colonial Investors LLC, Aloft Mgt. LLC, Aron Puretz, Oron Zarum and Sylvia Sherman. Respondents-Defendants Dequise Jackson and Isaiah Jackson appeared pro-se.

On April 30, 2021, Plaintiff and Respondents-Defendants Apex Colonial OH, LLC, Apex Colonial Holdings LLC, Apex Colonial Investments LLC, Aloft MGT, LLC, and Sylvia Sherman, by and through counsel, reached a stipulated resolution of certain preliminary matters in this case.

The terms of said stipulations and agreements were incorporated into enforceable orders and decrees of this Court filed on April 30, 2021.

Plaintiff and Respondents-Defendants Dequise Jackson and Isaiah Jackson also participated in negotiations and reached a stipulated agreement, the terms of which were incorporated into enforceable orders and decrees of this Court filed on April 30, 2021.

Plaintiff and Respondents-Defendants Apex Colonial OH LLC, Apex Colonial Holdings LLC, Apex Colonial Investors LLC, Aloft Mgt. LLC, Aron Puretz, Oron Zarum and Sylvia Sherman, by and through counsel, appeared before this Court on August 30, 2021, for a hearing on the merits.

Nicko Person and Sentral Hill did not appear before the Court and are not parties to this Order. Resolution of all claims against parties not present during the current proceedings shall occur at a future date determined based on the availability of the Court.

Respondents-Defendants waive any defects in service regarding this cause of action. Accordingly, the Court finds that all the aforementioned parties have been served according to law and are properly before the Court.

Stipulations between the Parties

1. Respondent-Defendant Apex Colonial OH, LLC is the record property owner of the real property known as Franklin County Permanent Parcel Nos. 010-134510, 010-134511, 010-134512, 010-134513, 010-134514, 010-134515, 010-134516, 010-134517, 010-134518, 010-134519, 010-134520, 010-134521, 010-134522, 010-134523, 010-134524, 010-134525, 010-134526, 010-134527, 010-134528, 010-134529, 010-134530, 010-134531, 010-134532, 010-134533, 010-134534, 010-134535, 010-134536, 010-137570, 010-

137571, 010-137572, 010-137573, 010-137574, 010-137576 and 010-137577, situated in the City of Columbus, Franklin County, Ohio (collectively, “the Premises” or “Colonial Village Apartments”).

2. Respondent-Defendant Apex Colonial OH, LLC has been the record property owner of the Premises since March 26, 2020.
3. Respondent-Defendant Apex Colonial Holdings, LLC is the sole member of Apex Colonial OH, LLC.
4. Respondent-Defendant Apex Colonial Investors, LLC is the managing member of Apex Colonial OH, LLC.
5. Respondent-Defendant Aloft MGT, LLC is the current property management company overseeing the Premises.
6. Respondent-Defendant Oron Zarum is the owner of Respondent-Defendant Apex Colonial OH, LLC.
7. Respondent-Defendant Aron Poretz has an interest in the Premises by virtue of a personal Guaranty of Payment and Performance dated August 28, 2020, and executed by Aron Poretz in consideration of an Open-End Mortgage for the Premises.
8. Respondent-Defendant Sylvia Sherman is an employee of Aloft Mgt, LLC and is the onsite property manager at Colonial Village Apartments.
9. Respondent-Defendant Sylvia Sherman has been the property manager at Colonial Village Apartments since 2010.
10. The real property at issue in this matter is a multi-unit apartment complex, known as Franklin County Permanent Parcel Nos. 010-134510, 010-134511, 010-134512, 010-134513, 010-134514, 010-134515, 010-134516, 010-134517, 010-134518, 010-134519,

010-134520, 010-134521, 010-134522, 010-134523, 010-134524, 010-134525, 010-134526, 010-134527, 010-134528, 010-134529, 010-134530, 010-134531, 010-134532, 010-134533, 010-134534, 010-134535, 010-134536, 010-137570, 010-137571, 010-137572, 010-137573, 010-137574, 010-137576 and 010-137577, situated in the City of Columbus, Franklin County, Ohio.

11. The Premises is a five hundred and eight (508) unit multi-family residential apartment complex, spanning thirty (30) parcels and ninety-six (96) buildings, located on the east side of the City of Columbus and known as "Colonial Village Apartments."
12. Colonial Village Apartments has been among the City of Columbus Department of Code Enforcement's ("Code Enforcement") worst properties since 2018.
13. On or about October 29, 2019, Code Enforcement began interior and exterior inspections at Colonial Village Apartments pursuant to numerous complaints from tenants and community members regarding violations of Columbus City Code at the Premises.
14. Over the course of four days, and in the presence of Respondent-Defendant SYLVIA SHERMAN, Code Enforcement issued more than four hundred (400) notice violations to the property owner and to property management for violations of Columbus City Code including but not limited to: bed bugs, rodent infestation, roach infestation, water damage, holes/cracks in ceiling(s), lack of utilities, missing air conditioning units, missing handrail(s), broken outlet cover(s), prohibited occupancy, broken cabinets, loose doors, damaged flooring, missing/inoperable smoke detector(s), fire damage, broken windows, loose handrails, bare and rotted wood, detached and rotted door framing, detached sections of fascia , damaged or missing rain carriers, missing downspouts, debris filled gutters, missing soffit materials, mortar voids and damaged concrete, potholes, missing unit

addresses/identifiers, broken/damaged light fixtures, damaged fencing, loose/damaged siding, damaged thresholds, exposed wiring, unsecured vacant units, trash and debris, solid waste, yard waste, graffiti and prohibited graphics.

15. From May 26, 2021 – July 23, 2021, the City of Columbus, Department of Refuse (“Refuse”) was unable to service refuse containers (“dumpsters”) located at the Premises due to bulk and unacceptable waste inside of the dumpsters, operable and inoperable vehicles blocking safe access to the dumpsters and the general overflowing nature of dumpsters located on the Premises.
16. On July 21, 2021, Refuse observed two (2) out of service dumpsters at the Premises.
17. On July 30, 2021, Code Enforcement completed compliance inspections at the Premises and observed minimal work in progress. Code Enforcement observed two hundred and one (201) outstanding code violations at the Premises. Thirteen (13) new emergency notice violations were issued to property ownership and property management for vacant and unsecured units at the Premises as well as missing or inoperable smoke detectors. Code Enforcement observed over one hundred (100) vacant and unsecured units at the Premises. Code violations observed at the Premises were substantially the same types of violations observed during the 2019 inspections.
18. Colonial Village Apartments is a location known by the Columbus Division of Police (hereinafter “CPD”) and surrounding community as a high-crime area due to the numerous felony drug offenses and incidents of violent crime occurring at the Premises, including, but not limited to, shootings, stabbings, homicides, felonious assaults, fights and drug overdoses.

19. Since March of 2020, CPD has responded to approximately one thousand five hundred (1,500) calls for service to the Premises.

20. Since January of 2019, the Columbus Division of Fire has responded to the Premises over seven hundred (700) times for drug overdoses, injuries due to assault, shootings, stabbings and individuals who were determined to be dead on arrival (DOA).

Having considered the stipulations herein, the facts as alleged in the Complaints ~~and the testimony and evidence admitted during the Permanent Injunction Hearing~~, the Court hereby **FINDS** as follows:

21. The Premises constitutes a public nuisance as defined by O.R.C. §§ 3719.19, 3767.01, and 3767.41; C.C.C. § 4703.01, and under common law.

22. The Premises is thus subject to abatement under O.R.C. § 3767, C.C.C. § 4701.08, and under common law.

23. Respondent-Defendant Apex Colonial OH, LLC is the real property owner of the Premises.

24. Respondent-Defendant Aloft Mgt, LLC is the property management company overseeing the Premises.

25. Respondents-Defendants are guilty of maintaining a public nuisance at the Premises pursuant to § 3767.02. Respondents-Defendants are guilty of maintaining a public nuisance at the Premises, for having a structure in violation of the laws pertaining to illegal drugs (including violations of O.R.C. Chapter 2925, O.R.C. Chapter 3719.10), and through the permission or existence of criminal activity at the Premises that substantially interferes with the area's public decency, sobriety, peace, safety, welfare, and good order.

26. Respondents-Defendants own fixtures, furniture, and movable property at the Premises that have been used in conducting, maintaining, and facilitating said public nuisance.
27. Respondents-Defendants at all times relevant to this action maintained a public nuisance at the Premises threatening the health, safety, and welfare of the people of the City of Columbus, persons at the Premises, and members of the Columbus, Ohio Division of Police and Division of Fire.
28. Pursuant to O.R.C. § 3767.41 and C.C.C. § 4703.01, the Court also finds that the Premises is not in compliance with Columbus City Code – Title 47.
29. Within thirty (30) days of this Order, Respondents-Defendants have a duty to abate the public nuisance at the Premises by bringing the property into compliance with any and all applicable provisions of Columbus City Code.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT:

Nuisance Abatement

30. Respondents-Defendants and any heirs, successors in interest or title, transferees and/or assigns, or any other person are permanently and perpetually enjoined from conducting, maintaining, using, occupying, or in any way permitting the use of the Premises as a public nuisance. This permanent injunction shall run with the land and will be binding upon the real property itself, as well as Respondents-Defendants, and any other successors and assigns in interest.
31. Respondents-Defendants are permanently and perpetually enjoined from conducting, maintaining, using, occupying, or in any way permitting the use of a public nuisance at the Premises or any other property in Franklin County and Columbus, Ohio.

32. **New Owner Screening.** In the event of a sale of the Premises, Respondents-Defendants or any successors or assigns in interest shall provide Plaintiff the following information no less than thirty (30) days before the property is set to transfer to the perspective buyer:

- a. Name of person(s) or entity;
- b. Address;
- c. Statutory agent and Agent's address (if applicable); and
- d. Copy of the proposed sale agreement.

33. Within thirty (30) days of this Order, Respondents-Defendants shall hire and maintain a qualified maintenance staff of at least six (6) members. The maintenance staff shall work a minimum of forty (40) hours per week, with at least one (1) staff member being available on the weekends and after-hours.

34. Respondents-Defendants shall provide the Court's Chief Environmental Specialist with name(s) and contact information of all maintenance workers within thirty (30) days of this Order.

35. Respondents-Defendants shall ensure that at least one property manager is present at the Premises and available to address tenant concerns a minimum of five (5) days per week. Said property manager shall be available a minimum forty (40) hours per week.

36. Respondents-Defendants shall provide the Court's Chief Environmental Specialist with the name(s) and contact information of all property managers within thirty (30) days of this Order.

37. **Respondents-Defendants shall provide written notice to all tenants at the Premises with name(s) contact information of the property manager(s) and maintenance staff.**

38. Within thirty (30) days of this Order, Respondents-Defendants shall establish a Service-Level Agreement ("SLA") for response to maintenance requests.

e. Emergency maintenance requests shall be responded to in writing within twenty-four (24) hours of receipt.

i. For the purposes of this Paragraph, an emergency maintenance request is defined as a maintenance request regarding heat, water, sewage, smoke detectors, and/or electricity.

f. Non-emergency maintenance requests shall be responded to in writing within one (1) to three (3) business days of receipt.

39. Pursuant to Columbus City Code 4551.05, Respondents-Defendants shall provide all tenants with a written receipt for any security deposit and for all rental payments at the time that deposit or payment is received. In the event of payment by cash or by any other means that does not provide an automatically generated written receipt, the receipt shall be provided within four (4) business days of the security deposit or rental payment being received.

40. At all times at the Premises, Respondents-Defendants or any successors or assigns in interest, shall ensure that the following rules, policies, and conditions be implemented and maintained:

g. There shall be no sale, use, or possession of drugs, to include synthetic drugs, at the Premises;

h. There shall be no sale, use, or possession of drug paraphernalia at the Premises;

i. There shall be no lewdness or prostitution at the Premises;

- j. There shall be no loitering whatsoever permitted upon the exterior of the Premises; management shall remove any person found to be loitering;
 - k. The Premises shall be keep in compliance with Columbus City Code as it pertains to Code Enforcement, Building Code, and Health Code; and
 - l. There shall be a trespass form on file with the Columbus Division of Police for the Premises. This form shall be kept update to date such that it is always valid for the Premises.
41. All tenants at the Premises shall allow for the inspection of occupied units with outstanding code violations.
- a. Landlord shall provide required notice to all tenants prior to entering or facilitating access to any unit for the purpose of inspecting outstanding code violations.
 - b. Upon the issuance of said notice, Landlord shall facilitate access to Code Enforcement or the Court's Chief Environmental Specialist to complete inspections.

Security

42. Within thirty (30) days of this Order, Respondents-Defendants shall employ no less than six (6) private security officers. The private security officers must cover a minimum of sixteen (16) hour shift for seven (7) days per week at the Premises.
- a. Respondents-Defendants shall provide to the Plaintiff the name(s) and contact(s) of all persons retained by the Defendants to provide security services at the Premises no less than seven (7) days after retention of said services.

- b. Any private security company or officer retained by Respondents-Defendants to perform security services at the Premises shall be registered or licensed according to the laws of the State of Ohio.
 - i. Respondents-Defendants shall provide proof of applicable licensure or registration to the Plaintiff no less than fifteen (15) days after retention of security services at the Premises.
 - ii. If private security services have already been retained by the Respondents-Defendants prior to the execution of this Order, the Respondents-Defendants shall immediately provide proof of required licensure or registration to the Plaintiff.
 - c. Respondents-Defendants shall provide the Court's Chief Environmental Specialist with the name(s) and contact information of all security officers within thirty (30) days of this Order.
43. Respondents-Defendants shall maintain, install, and/or return to working condition, full HD 1080p Indoor/Outdoor Dome Cameras, or cameras of a comparable equivalent, to monitor all facets of the exterior of the Premises. The camera system shall be maintained at all times with the following stipulations:
- a. All cameras shall be operational and recording footage during all hours of operation;
 - b. Monitors displaying the real-time footage captured by all exterior cameras shall be situated in such a manner as to be easily viewed by law enforcement at all times;
 - c. Footage captured by all exterior cameras shall be recorded, stored, and held for no less than thirty (30) days;

- d. Footage captured by all exterior cameras shall be made available to law enforcement upon request;
 - e. Within fifteen (15) days of this Order, Defendants, in conjunction with Plaintiff, shall create a plan for the installation and/or repair of the aforementioned cameras throughout the Premises;
 - i. Respondents-Defendants shall provide the Court's Chief Environmental Specialist with the plan within fifteen (15) days of this Order.
 - f. Defendants cannot be found in Contempt of this Paragraph until the aforementioned plan has been agreed upon by the Parties and implemented by Defendants unless Defendants cause undue delay in the creation or implementation of this plan.
 - i. This Paragraph is not intended to prevent legal action, enforcement, or future findings of Contempt for other findings of violations of this Order.
44. Within thirty (30) days of this Order, Respondents-Defendants shall install and maintain full and sufficient outdoor lighting upon the exterior of the Premises so as to illuminate all sides of the Premises; it shall be maintained to ensure all lights are in working order.
- a. Respondents-Defendants shall allow for the Court's Chief Environmental Specialist or Plaintiff to complete a lighting inspection to determine compliance with the terms of this Paragraph.
45. Respondents-Defendants shall cause for the immediate identification and trespass or commencement of eviction proceedings of all known persons contributing to nuisance conditions at the Premises, to include persons engaging in criminal activity and persons who invite, house or provide a haven for persons engaging in criminal activity at or on the Premises.

- a. Respondents-Defendants shall trespass from the Premises all persons evicted from the Premises pursuant to involvement or connection to criminal activity at or on the Premises.
- b. Respondents-Defendants shall keep a current and updated trespass list indicating all those who have been trespassed from the Premises, the trespass list shall be made available to law enforcement upon request.
- c. Respondents-Defendants shall maintain a current agent authorization form on file with Columbus Police at all times.

Code Violations

- 46. Within thirty (30) days of this Order, Respondents-Defendants are ordered to bring the property into compliance with all applicable provisions of Columbus City Code. Outstanding code violations as of August 3, 2021 shall be filed as Exhibit A, under separate cover.
- 47. Respondants-Defendants shall facilitate access for the Environmental Specialist to enter upon the Premises to inspect for code violations. Within thirty (30) days of this Order, Respondents-Defendants shall remediate all outstanding interior unit and interior common area violations and open vacant structure violations of the Columbus City Code present at or on the Premises.
 - a. Respondents-Defendants shall allow for the Court's Chief Environmental Specialist or Plaintiff to complete an inspection to determine compliance with the terms of this Paragraph.
- 48. Within five (5) days of this Order, Respondents-Defendants shall remediate all outstanding emergency violations of the Columbus City Code present at or on the Premises.

- a. Respondents-Defendants shall allow for the Court's Chief Environmental Specialist or Plaintiff to complete an inspection to determine compliance with the terms of this Paragraph.

49. Respondents-Defendants shall remediate all new emergency, interior unit and interior common area violations, and open vacant structure violations of the Columbus City Code present at or on the Premises pursuant to the deadlines indicated in the respective Notice.

- a. For the purposes of this Order, vacant unit shall mean any of the following:

- ii. A dwelling or dwelling unit which is not being occupied under a lease, rental agreement or permission of the Respondents-Defendants.

- iii. A dwelling unit that has been ordered vacant or declared unfit for habitation by Code Enforcement.

- iv. A dwelling unit which is not being occupied under a lease, rental agreement or permission of the Respondents-Defendants and has an open notice of violation issued by Code Enforcement.

1. This Paragraph shall not apply to the following:

- a. Vacant units at the Premises that are deemed rent ready by the Defendants.

- b. Vacant units that are in short term transition, not to exceed seven (7) days.

- b. All persons found unlawfully occupying vacant units at the Premises shall be immediately removed and trespassed from the Premises.

2. Respondents-Defendants shall immediately begin nightly checks of all vacant units to ensure compliance with the terms of this Paragraph.
3. Respondents-Defendants shall provide an accurate and updated list of all vacant units to all hired security personnel daily, and to CPD and the Columbus City Attorney, weekly. Said list shall include identification of all units currently deemed rent ready by the Defendants.
4. Respondents-Defendants shall provide an accurate and updated rent roll for the entire Premises to the hired security company and to the Columbus City Attorney, weekly.
 - a. Any rent roll list provided in accordance to the terms of this Paragraph shall include tenant name and corresponding unit
- c. Within seventy-two (72) hours of this Order, all emergency vacant units, as defined by Columbus City Code Enforcement, located at the Premises shall be boarded and secured to the specifications required by Columbus City Code.
 - i. Respondents-Defendants shall allow for the Court's Chief Environmental Specialist or Plaintiff to complete an inspection to determine compliance with the terms of this Paragraph.
- d. Within thirty (30) days of this Order, all non-emergentvacant units located at the Premises shall be boarded and secured at all times in accordance to the specifications required by Columbus City Code.

- i. Respondents-Defendants shall allow for the Court's Chief Environmental Specialist or Plaintiff to complete an inspection to determine compliance with the terms of this Paragraph.
- 50. Respondents-Defendants shall ensure that all units that are vacant with outstanding code violations are rendered vacant due to hazardous conditions or need for extensive repairs at the Premises, shall pass a life and safety inspection completed by Code Enforcement prior to re-occupancy.
- 51. Respondents-Defendants shall ensure that the Premises be maintained in compliance with all applicable provisions of Columbus City Code.
 - a. Plaintiff shall notify Respondent-Defendants of any violations of Columbus City Code following its regular methods of notification for the applicable code violation.
 - b. Upon notifications of the violation, Respondents-Defendants shall have the chance to cure the violation within the timeframe regularly allotted for the applicable code violation under Columbus City Code.
 - c. Both Plaintiff's notification and Respondent-Defendants' chance to cure shall occur prior to Plaintiff filing for Contempt of this Order pursuant to this paragraph.
- 52. Within fifteen (15) days of this Order, Respondents-Defendants shall repair and maintain in working condition all out-of-service dumpsters at the Premises.
 - a. Respondents-Defendants shall allow for the Court's Chief Environmental Specialist or Plaintiff to complete an inspection to determine compliance with the terms of this Paragraph.
- 53. Respondents-Defendants shall perform regular grounds maintenance, including managing trash and debris.

54. Within thirty (30) days of this Order, Respondents-Defendants shall establish prohibited areas for parking of operable vehicles so as to not block safe access to dumpsters and/or public right of ways.

55. Within thirty (30) days of this Order, Respondents-Defendants shall remove any and all inoperable vehicles on the Premises.

- a. Should Respondents-Defendants fail to do so, Plaintiff has permission to enter onto the Premises to remove the inoperable vehicles, to the extent that they are blocking safe access to the dumpsters, at the expense of Respondent-Defendant.

Costs

56. Respondents-Defendants are responsible for paying court costs in the amount of \$1,476.00.

These costs are due ninety (90) days after the closing of this matter.

A hearing shall be held on September 14, 2021 to determine compliance, contempt or any other remedy available at law up to and including the appointment of a receiver pursuant to ORC 3767.41 and/or 2735.01.
@ 11am

This is a final appealable order. Pursuant to Civ. R. 58, the Clerk of Court is directed to serve upon all parties not in default notice of this Judgment and its date of entry upon the journal.

IT IS SO ORDERED.

8/3/2021
Date


Judge Stephanie Mingo

EXHIBIT 10

IN THE FRANKLIN COUNTY MUNICIPAL COURT
ENVIRONMENTAL DIVISION
FRANKLIN COUNTY, OHIO

FILED
Franklin County Municipal Court
APR 14 2021
By LORI M. TYACK, CLERK
Deputy Clerk

STATE EX REL.
COLUMBUS CITY ATTORNEY
ZACH KLEIN
375 South High Street, 17th Floor
Columbus, Ohio 43215

Plaintiff,

v.

APEX COLONIAL OH LLC
c/o Vcorp Agent Services, Inc., Statutory Agent
4400 Easton Commons Way, Suite 125
Columbus, Ohio 43219

And also at:
2365 Nostrand Avenue
Brooklyn, New York 11210

And also at:
10 Hill Street
Newark, New Jersey 07102

And also at:
4706 18th Avenue
Brooklyn, New York 11204

And also at:
433 E. Las Colinas Blvd., Suite 300
Irving, Texas 75039

and

APEX COLONIAL HOLDINGS LLC
c/o VCORP Services, LLC, Statutory Agent
1013 Centre Road, Suite 403-B
Wilmington, Delaware 19805

and

APEX COLONIAL INVESTORS LLC
c/o Vcorp Agent Services, Inc., Statutory Agent
4400 Easton Commons Way, Suite 125

Case No.

Judge Stephanie Mingo

Columbus, Ohio 43219

And also at:
2365 Nostrand Avenue
Brooklyn, New York 11210

And also at:
10 Hill Street
Newark, New Jersey 07102

And also at:
4706 18th Avenue
Brooklyn, New York 11204

And also at:
433 E. Las Colinas Blvd., Suite 300
Irving, Texas 75039

COLONIAL VILLAGE CPDX LLC
c/o Unisearch, Inc., Statutory Agent
3958 Brown Park Dr., Ste. D
Hilliard, Ohio 43026

And also at:
1256 Rand Avenue
Columbus, Ohio 43227

and

ALOFT MGT LLC
c/o Sylvia Sherman, Property Manager
1256 Rand Avenue
Columbus, Ohio 43227

and

COLONIAL PROPERTY HOLDINGS LLC
c/o National Service Information, Inc.
145 Baker Street
Marion, Ohio 43302

And also at:
885 Second Avenue
New York, New York 10017

And also at:
1125 Ocean Avenue

Lakewood, New Jersey 08701

COLONIAL PROPERTY HOLDINGS LLC :

4706 18th Avenue

Brooklyn, New York 11204

and

ORON ZARUM

47 High Street

Lakewood, New Jersey 08701

And also at:

139 Ocean Avenue, Suite 5

Lakewood, New Jersey 08701

and

SYLVIA SHERMAN, also known as

SYLVIA MCKEITHEN

1630 E. 25th Avenue

Columbus, Ohio 43219

and

SENTRAL HILL

1309 Duxberry Avenue

Columbus, Ohio 43211

and

DEQUISE JACKSON

1652 E. 25th Avenue

Columbus, Ohio 43213

And also at:

NICKO PERSON

7393 Brooke Blvd.

Reynoldsburg, Ohio 43068

and

ISALAH JACKSON

741 Mount Vernon Avenue

Marion, Ohio 43302

**UNKNOWN PERSONS LOCATED AT
COLONIAL VILLAGE APARTMENTS**
1256 Rand Avenue
Columbus, Ohio 43227

and

ARON PURETZ
309 Miller Road
Lakewood, New Jersey 08701

and

MADISON EXCHANGE LLC
885 Second Avenue
New York, New York 10017

and

EFM TRANSFER AGENT LLC
c/o Cogency Global, Inc., Statutory Agent
850 New Burton Road, Suite 201
Dover, Delaware 19904

And also at:

53 Forest Avenue
Old Greenwich, Connecticut 06870

and

KEYBANK NATIONAL ASSOCIATION
127 Public Square
Cleveland, Ohio 44114

And also at:

66 South Pearl Street
Albany, New York 12207

and

PIERCE CARPET CLEANING LLC
c/o Jeffery Pierce, Statutory Agent
215 Buckeye Circle
Columbus, Ohio 43217

and

GARVER ASSET PROTECTION, LLC
c/o Nicholas R. Garver, Statutory Agent
22 Valley View Drive SE
Heath, Ohio 43056

and

CHERYL BROOKS SULLIVAN
Franklin County Treasurer
373 S. High Street, 17th Floor
Columbus, Ohio 43215

and

REAL PROPERTY AT:

1300 Brookway Road
Columbus, Ohio 43227

Parcel No. 010-134510

1294 Brookway Road
Columbus, Ohio 43227

Parcel No. 010-134511

1288 Brookway Road
Columbus, Ohio 43227

Parcel No. 010-134512

1280 Brookway Road
Columbus, Ohio 43227

Parcel No. 010-134513

1272 Brookway Road
Columbus, Ohio 43227

Parcel No. 010-134514

1264 Brookway Road
Columbus, Ohio 43227

Parcel No. 010-134515

1256 Brookway Road
Columbus, Ohio 43227

Parcel No. 010-134516

1248 Brookway Road
Columbus, Ohio 43227

Parcel No. 010-134517

1240 Brookway Road
Columbus, Ohio 43227

Parcel No. 010-134518

1180 Olney Drive
Columbus, Ohio 43227

Parcel No. 010-134519

1179 Olney Drive

Parcel No. 010-134520

Columbus, Ohio 43227	:	
3639 Allendale Drive	:	Parcel No. 010-134521
Columbus, Ohio 43227	:	
3651 Allendale Drive	:	Parcel No. 010-134522
Columbus, Ohio 43227	:	
3663 Allendale Drive	:	Parcel No. 010-134523
Columbus, Ohio 43227	:	
1239 Brookway Road	:	Parcel No. 010-134524
Columbus, Ohio 43227	:	
1247 Brookway Road	:	Parcel No. 010-134525
Columbus, Ohio 43227	:	
1255 Brookway Road	:	Parcel No. 010-134526
Columbus, Ohio 43227	:	
1263 Brookway Road	:	Parcel No. 010-134527
Columbus, Ohio 43227	:	
1271 Brookway Road	:	Parcel No. 010-134528
Columbus, Ohio 43227	:	
1279 Brookway Road	:	Parcel No. 010-134529
Columbus, Ohio 43227	:	
1287 Brookway Road	:	Parcel No. 010-134530
Columbus, Ohio 43227	:	
1295 Brookway Road	:	Parcel No. 010-134531
Columbus, Ohio 43227	:	
1301 Brookway Road	:	Parcel No. 010-134532
Columbus, Ohio 43227	:	
3668 Allendale Drive	:	Parcel No. 010-134533
Columbus, Ohio 43227	:	
3666 Allendale Drive	:	Parcel No. 010-134534
Columbus, Ohio 43227	:	
1228-1230 Brookway Road	:	Parcel No. 010-134535
Columbus, Ohio 43227	:	
1225-1227 Brookway Road	:	Parcel No. 010-134536

Columbus, Ohio 43227	:	
	:	
3600-3626 Allendale Drive	:	Parcel No. 010-137570
Columbus, Ohio 43227	:	
	:	
1171 Rand Avenue	:	Parcel No. 010-137571
Columbus, Ohio 43227	:	
	:	
3533 Rand Ct.	:	Parcel No. 010-137572
Columbus, Ohio 43227	:	
	:	
3557-3560 Rand Circle	:	Parcel No. 010-137573
Columbus, Ohio 43227	:	
	:	
3514-3562 Rand Square	:	Parcel No. 010-137574
Columbus, Ohio 43227	:	
	:	
1256 Rand Avenue	:	Parcel No. 010-137576
Columbus, Ohio 43227	:	
	:	
1223-1294 Berwick Arms Place	:	Parcel No. 010-137577
Columbus, Ohio 43227	:	
Defendants.	:	

**COMPLAINT FOR PRELIMINARY
AND PERMANENT INJUNCTIVE RELIEF**

1. This complaint concerns enforcement of the Ohio Revised Code (hereinafter "R.C.") Chapter 3767 et seq., Columbus City Code-Title 47, other Columbus City code provisions, and common law so as to be within the exclusive jurisdiction of the Environmental Division of the Franklin County Municipal Court pursuant to R.C. § 1901.183.
2. Plaintiff Zach Klein is the duly-elected, sworn, and acting City Attorney for the City of Columbus, Ohio and is a party charged at both common law and by R.C. § 3767.03, R.C. § 713.13 and R.C. § 715.30 with the prevention, prosecution, and abatement of any public nuisance within the City of Columbus, Franklin County, Ohio.

3. The Court has personal jurisdiction over the individual Defendants pursuant to R.C. § 2307.382 A(8) as the basis of this Complaint is real property situated in Franklin County.
4. The Court is the proper venue pursuant to Civ.R. 3(B)(5) as the subject of the action is real property situated in Franklin County, Ohio.

PARTIES

5. The real property that is the subject matter of this Complaint is a multi-unit apartment complex, known as Franklin County Permanent Parcel Nos. 010-134510, 010-134511, 010-134512, 010-134513, 010-134514, 010-134515, 010-134516, 010-134517, 010-134518, 010-134519, 010-134520, 010-134521, 010-134522, 010-134523, 010-134524, 010-134525, 010-134526, 010-134527, 010-134528, 010-134529, 010-134530, 010-134531, 010-134532, 010-134533, 010-134534, 010-134535, 010-134536, 010-137570, 010-137571, 010-137572, 010-137573, 010-137574, 010-137576 and 010-137577.

(hereinafter "Premises" or "Colonial Village Apartments"), situated in the City of Columbus, Franklin County, Ohio.
6. This action is *in rem* with respect to the Premises.
7. The term "Premises," as used in this Complaint, shall refer to each subject parcel in its entirety, including all structures, buildings, curtilage, parking lot areas and/or enclosures.
8. Defendant APEX COLONIAL OH LLC is the record owner of the Premises by virtue of a Special Warranty Deed filed with the Franklin County Recorder, Instrument No. 202003270042672.

9. Defendant APEX COLONIAL OH LLC has been the record owner of the Premises since March 26, 2020.
10. Defendant APEX COLONIAL HOLDINGS LLC is the sole member of Apex Colonial OH LLC and is an agent of the property owner as evidenced by the execution of certain mortgage documents for the Premises on behalf of the record property owner.
11. Defendant APEX COLONIAL INVESTORS LLC is the managing member of Apex Colonial OH LLC and is an agent of the property owner as evidenced by the execution of certain mortgage documents for the Premises on behalf of the real property owner.
12. Defendant COLONIAL VILLAGE CPDX LLC is an “owner” by virtue of its charge, care and control of the Premises pursuant to certain vendor contracts entered for maintenance and security at Colonial Village Apartments.
13. Defendant ALOFT MGT LLC is the current property management company overseeing Colonial Village Apartments and thus an “owner” by virtue of its charge, care and control of the Premises.
14. Defendant COLONIAL PROPERTY HOLDINGS LLC, a Delaware Limited Liability Company, was the record owner of the Premises from March 23, 2015 – March 26, 2020 and may still hold an interest in the Premises by virtue of a Mortgage and Assignment of Rents filed with the Franklin County Recorder, Instrument Nos. 202007230106465 and 202007230106466, respectfully.
15. SYVIA SHERMAN is an employee of ALOFT MGT LLC and the onsite property manager at Colonial Village Apartments and thus an “owner” by virtue of her charge, care and control of the Premises.

16. Defendant ORON ZARUM is the owner of Apex Colonial OH LLC and Colonial CPDX LLC and has held himself out as an owner with charge, care and control of the Premises as evidenced by the execution of certain documents on behalf of the property owner for the retention of vendor services at the Premises, in addition to a personal Guaranty of Payment and Performance executed by ORAN ZARUM in consideration of an Open-End Mortgage for the Premises made in favor of EFM TRANSFER AGENT LLC.
17. Defendant ARON PURETZ may have an interest in the Premises by virtue of a personal Guaranty of Payment and Performance dated August 28, 2020 and executed by Aaron Poretz in consideration of an Open-End Mortgage for the Premises made in favor of EFM TRANSFER AGENT LLC.
18. Defendant SENTRAL HILL is an individual contributing to nuisance conditions at the Premises pursuant to their involvement in drug offenses and/or felony crimes of violence at the Premises.
19. Defendant DEQUISE JACKSON is an individual contributing to nuisance conditions at the Premises pursuant to their involvement in drug offenses and/or felony crimes of violence at the Premises.
20. Defendant NICKO PERSON is an individual contributing to nuisance conditions at the Premises pursuant to their involvement in drug offenses and/or felony crimes of violence and the Premises.
21. Defendant ISALAH JACKSON is an individual contributing to nuisance conditions at the Premises pursuant to their involvement in drug offenses and/or crimes of violence at the Premises.

22. Defendants UNKNOWN PERSONS is an individual contributing to nuisance conditions at the Premises pursuant to their involvement in drug offenses and/or crimes of violence at the Premises.
23. Defendant COLONIAL PROPERTY HOLDINGS LLC, an Ohio Limited Liability Company, is named solely as an interested party by virtue of a Mortgage and Assignment of Rents held in its favor, as filed with the Franklin County Recorder's Office, Instrument Nos. 202003270042673 and 202003270042674, respectfully.
24. MADISON EXCHANGE LLC is named solely as an interested party by virtue of a Mortgage and Assignment of Rents in which Madison Exchange LLC serves as qualified intermediary for Colonial Property Holdings LLC, Ohio Limited Liability Company, as filed with the Franklin County Recorder's Office, Instrument Nos. 202003270042673 and 202003270042674, respectfully.
25. Defendant EFM TRANSFER AGENT LLC is named solely as an interested party by virtue of a Mortgage and Assignment of Rents held in its favor, as filed with the Franklin County Recorder's Office, Instrument Nos. 202010060152432 and 20200828012829, respectfully.
26. Defendant KEYBANK NATIONAL ASSOCIATION is named solely as an interested party by virtue of a Mortgage and Assignment of Rents held in its favor, as filed with the Franklin County Recorder's Office, Instrument Nos. 201605200064054 and 201605200064055, respectfully.
27. Defendant PIERCE CARPET CLEANING LLC is named solely as an interested party by virtue of a Mechanic's Lien held in its favor in the amount of \$22,579.00, as filed with the Franklin County Recorder's Office, Instrument No. 202012290207365.

28. Defendant GARVER ASSET PROTECTION LLC is named solely as an interested party by virtue of a Mechanic's Lien held in its favor in the amount of \$196,710.38, as filed with the Franklin County Recorder's Office, Instrument No. 202103080042084.

STATEMENT OF FACTS

Background

29. The Premises is a 508 unit multi-family residential apartment complex, spanning thirty (30) parcels and ninety-six (96) buildings, located on the east side of the City of Columbus and known as "Colonial Village Apartments."
30. Colonial Village Apartments serves as one of the few and largest sources of affordable housing within the City of Columbus.
31. Approximately sixty-seven (67) individuals living at Colonial Village Apartments are part of the Columbus Metropolitan Housing Association's (CMHA) Housing Choice Voucher Program which provides housing assistance for very low -income families, the elderly and disabled. Through the program, a housing subsidy is paid to the landlord directly by CMHA on behalf of the participating family or individual. The family or individual pays the difference.
32. An additional thirty-two (32) units at Colonial Village Apartments are occupied by clients of the Community Shelter Board (hereinafter "CSB"), an organization serving individuals and families with homelessness prevention, shelter, street outreach, rapid re-housing and permanent supportive housing. Clients of CSB are also provided a subsidy paid by the Community Shelter Board to the landlord for payment of rent.
33. The market price for a unit at Colonial Village Apartments ranges from approximately \$530.00 to \$745.00 per month.

34. Approximately 130 of the 508 total units at Colonial Village Apartments are vacant, leaving the Premises at roughly 74% occupancy and earning over \$200,000.00 per month in rent payments.
35. On March 23, 2015, the Premises transferred to COLONIAL PROPERTY HOLDINGS LLC, an Ohio Limited Liability Company, for \$4,200,000.00.
36. On March 26, 2020, the Premises transferred to APEX COLONIAL OH LLC, an Ohio Foreign Limited Liability Company, for \$0.00.
37. COLONIAL PROPERTY HOLDINGS LLC, a Delaware Limited Liability Company, continues to hold a significant interest in the Premises by virtue of a Mortgage and Assignment of rents in the sum of \$12,265,000.00.
38. The Premises currently benefits from the following tax abatements:
 - a. A twelve (12) year, 100% abatement for Franklin County Parcel No. 010-137576 valued at \$2,094,900.00 and approved by the City of Columbus Housing Administrator on August 13, 2012.
 - b. A twelve (12) year, 100% abatement for Franklin County Parcel No. 010-137577 valued at \$1,150,000.00 and approved by the City of Columbus Housing Administrator on August 13, 2012.

CHRONIC CODE VIOLATIONS AND UNSANITARY CONDITIONS AT
COLONIAL VILLAGE APARTMENTS

39. In 2018, Code Enforcement's Pro-Active Code Enforcement Team (hereinafter "PACE") identified Defendant COLONIAL PROPERTY HOLDINGS LLC as one of the top twenty "worst landlords" in the City of Columbus pursuant to a number of factors including; the number of notice violations issued to the Defendant, total

outstanding code violations present at or on the Premises, the type of violations present at or on the Premises and total number of open civil cases against the property or property owner for nuisance conditions.

40. In 2019, PACE identified Defendant COLONIAL PROPERTY HOLDINGS LLC as one of the top five “worst landlords” in the City of Columbus.
41. On or about October 10, 2019 and pursuant to continued complaints from tenants and members of the surrounding community regarding violations of Columbus City Code at the Premises, Code Enforcement Officer Robert Smith made contact with Nathan Mehl, representative for the then property owner, Colonial Property Holdings LLC, and received authorization allowing Code Enforcement to enter onto the Premises for the purpose of conducting interior and exterior code inspections.
42. On or about October 29, 2019, the City of Columbus Department of Code Enforcement (hereinafter “Code Enforcement”) began interior and exterior inspections at Colonial Village Apartments.
43. Over the course of four days, Code Enforcement issued more than 400 notice violations to the property owner and to property management for the following violations observed at the Premises:

a. Interior housing violations including but not limited to:

- i. Bed bugs
- ii. Rodent infestation
- iii. Roach infestation
- iv. Water damage
- v. Holes/cracks in ceiling(s)
- vi. Lack of utilities

- vii. Missing air conditioning
- viii. Missing handrail(s)
- ix. Broken outlet cover(s)
- x. Prohibited occupancy
- xi. Broken cabinets
- xii. Loose doors
- xiii. Damaged flooring
- xiv. Missing/inoperable smoke detector(s)
- xv. Fire damage

b. Exterior housing violations including but not limited to:

- i. Broken windows
- ii. Loose handrails
- iii. Bare and rotted wood
- iv. Detached and rotted door framing
- v. Detached sections of fascia
- vi. Damaged or missing rain carriers
- vii. Missing downspouts
- viii. Debris filled gutters
- ix. Missing soffit materials
- x. Mortar voids and damaged concrete
- xi. Potholes
- xii. Missing unit addresses/identifiers
- xiii. Broken/damaged light fixtures
- xiv. Damaged fencing

- xv. Loose/damaged siding
- xvi. Damaged thresholds
- xvii. Exposed wiring
- xviii. Unsecured vacant units

c. Environmental violations including but not limited to:

- i. Trash and debris
 - ii. Solid waste
 - iii. Yard waste
- d. Graffiti
- e. Prohibited graphics

- 44. Each notice violation issued contained a deadline for remediation based on the type of violation cited. All initial deadlines have passed.
- 45. Property Manager Sylvia Sherman and Maintenance Supervisor Angelica Tapia were onsite at the Premises during the inspections.
- 46. Following initial inspections, Code Enforcement returned to the Premises on a weekly basis to complete re-inspections for compliance.
- 47. On or about March 3, 2020, while at the Premises, Angelica Tapia notified Code Enforcement Officers that the Premises had been sold to a new owner. As a result, Code Enforcement inspections were temporarily suspended.
- 48. On or about March 5, 2020, the City was notified via email that the new owner of Colonial Village Apartments had contracted with Tim Vance of Housing Crime Consultants, Inc. to assist with all issues at the Premises pertaining to safety, crime control and security.

49. On or about March 11, 2020, City officials met with Property Manager Sylvia Sherman and Tim Vance of Housing Crime Consultants, Inc. to discuss the sale of the Premises, outstanding code violations present at the Premises, the continued increase in criminal activity at the Premises, the City's expectations of the new owners and the new owner's plan to combat the issues plaguing the apartment complex.
50. On or about March 11, 2020, Sylvia Sherman notified city officials that Defendant ALOFT MGT LLC (hereinafter "Aloft Management") was engaged as the new property manager in charge of the Premises. Sylvia Sherman would remain the onsite property manager as an employee of Aloft Management.
51. On or about March 12, 2020, Code Enforcement received permission via email from Sylvia Sherman, Steve Mayer – Regional Manager and David Helfgott – COO of Aloft Management, to resume compliance inspections at the Premises.
52. On or about March 13, 2020 Code Enforcement operations at the Premises were suspended in response to the spread of COVID-19.
53. On or about March 18, 2020, Angelica Tapia, Maintenance Supervisor for Colonial Village Apartments, notified the City of her resignation.
54. On or about March 20, 2020, Colonial Village Apartments experienced severe flooding leaving several occupied units, hallways and parking lots under water.
55. On or about March 21, 2020 Code Enforcement's Emergency Inspection Team inspected the Premises and issued the following Emergency Orders:

a. Order No. 20441-00233

- i. Lower level of the building located at 1200 Brookway Rd. has flooded, causing unsanitary conditions throughout the lower level rendering all lower level units uninhabitable.

b. Order No. 20441-00234

- i. Lower level of the building located at 3666 Allendale Dr. has flooded causing unsanitary conditions throughout the lower level rendering all lower level units uninhabitable.

c. Order No. 20441-00235

- i. The dwelling unit located at 3663 Allendale Dr., unit B has flooded, causing unsanitary conditions throughout rendering this unit uninhabitable.

- 56. On or about March 25, 2020, City officials met again with property managers Sylvia Sherman, Steve Mayer and David Helfgott and Tim Vance of Housing Crime Consultants, Inc. to discuss progress toward compliance with all outstanding code violations and increased safety concerns at the Premises. Property management communicated to city officials their commitment to safety at the Premises and the remediation of all code violations in a timely manner. At this time, over half of the initial violations cited during the October 2019 inspections remained outstanding at the Premises.
- 57. On or about March 26, 2020, the Premises transferred to APEX COLONIAL OH LLC.
- 58. On or about December 15, 2020, Code Enforcement Officer Bill Williams (hereinafter "CEO Williams") contacted Sylvia Sherman to notify her of the City's intent to resume compliance inspections at the Premises and to request permission to enter on the Premises to conduct said inspections. At this time, approximately 200 code violations remained outstanding at the Premises.

59. On or about December 16, 2020, Sylvia Sherman contacted CEO Williams requesting compliance inspections be placed on hold until January 2021 due to a COVID-19 outbreak amongst certain staff members at the Premises.
60. Code Enforcement continued to receive new complaints from tenants at Colonial Village Apartments and members of the surrounding community regarding issues at the Premises, including but not limited to:
 - a. Leaking air conditioning units
 - b. Black Mold
 - c. Strong odor
 - d. Mice Infestation
 - e. Roaches
 - f. Human feces
 - g. Broken windows
 - h. Unsecured buildings
 - i. Trash and debris
 - j. Unresponsive property management
61. On or about March 8, 2021, Code Enforcement resumed interior and exterior compliance inspections at the Premises.
62. On or about March 9, 2021, CPD Sergeant Mike Ramsey spoke with Sylvia Sherman regarding threats made to maintenance staff at Colonial Village Apartments from various persons occupying units in the Brookway and Berwick Arms buildings. According to Sylvia Sherman, maintenance staff went to repair a leaking door at 1283 Berwick Arms Place, Unit A and was told by the occupant of said unit that “they were

not fixing any door, not coming in,” adding that no one is coming in and if anybody does they will be shot, including the police.

63. Due to the aforementioned safety concerns, CPD called off ninety-nine (99) unit inspections scheduled for the Brookway and Berwick Arms buildings located on the Premises. Code Enforcement was unable to inspect said units and thus unable to confirm compliance or non-compliance.

64. Between March 8, 2021 and March 10, 2021, Code Enforcement successfully completed 78 unit inspections. Within the 78 units inspected, 182 notice violations remained outstanding at the Premises. The following violations of Columbus City Code were observed:

a. Interior housing violations including but not limited to:

- i. Roach infestation
- ii. Raw sewage and fecal matter throughout interior unit(s)
- iii. Damaged interior wall(s)
- iv. Improper repairs
- v. Water damage
- vi. Inoperable appliances
- vii. Holes in wall(s)
- viii. Inoperable and broken window(s)
- ix. Torn carpet

b. Exterior housing violations including but not limited to:

- i. Bare and exposed wood
- ii. Mortar voids
- iii. Open and unsecured vacant unit(s)

- iv. Damaged sections of wall in stairway(s)
- v. Bullet holes in window(s)
- vi. Broken/missing window(s)
- vii. Rain carrier(s) in disrepair
- viii. Damaged soffit(s)
- ix. Damaged/missing brick(s)
- x. Fire damage
- xi. Damaged concrete thresholds
- xii. Structure(s) not weather-tight
- xiii. Damaged/missing fascia
- xiv. Detached downspout(s)
- xv. Damaged door frame(s)
- xvi. Rotted wood surfaces
- xvii. Gutter(s) full of debris and in disrepair
- xviii. Damaged shingles
- xix. Exposed wiring
- xx. Damaged fencing
- xxi. Potholes
- xxii. Missing striping in parking area

c. Environmental violations including but not limited to:

- i. Trash and debris
- ii. High grass and weeds
- iii. Solid waste
- iv. Yard waste

d. Zoning violations including but not limited to:

- i. Inoperable vehicles
 - ii. Improper exterior storage
 - iii. Prohibited graphics
65. Several of the violations observed during the inspections completed from March 8, 2021 to March 10, 2021 were noted by Code Enforcement as the exact same violations observed at the Premises during initial inspections conducted in October of 2019.
66. On or about April 7, 2021, Garver Security officers observed unsanitary conditions in several units at the Premises located at 1200 Brookway Rd., including the following:
- a. Black mold;
 - b. Visible blood stains;
 - c. Human feces; and
 - d. Several vacant and unsecured units which Garver Security noted were vacated during the March 2021 flood at the Premises and units in which Garver Security personnel have to run people out of “daily.”
67. Garver Security officers recommended all tenants living at the 1200 Brookway Rd. building be moved due to the unsanitary conditions present at the Premises.

POLICE CALLS FOR SERVICE AND CRIMES OF VIOLENCE AT

COLONIAL VILLAGE APARTMENTS

68. Colonial Village Apartments is a location known by the Columbus Division of Police (hereinafter “CPD”) as a crime ridden property notorious for the extremely high level of violent crime that permeates the apartment complex and plagues the lives of both its residents and the surrounding community.

69. Between January of 2018 and June of 2019, CPD was called to the Premises over 4,000 times. Over 500 of the calls for service were for incidents of violence, including but not limited to:
- a. 50 calls for shots fired
 - b. 5 shootings
 - c. 2 Homicides
 - d. 63 gun runs
 - e. 16 cuttings/stabbings
 - f. 38 Assaults
 - g. 53 fights
 - h. 95 Burglaries
70. Since 2018, CPD has been called to the Premises approximately thirty-five (35) times in response to Narcotics complaints, drug offenses and drug overdoses.
71. Since 2019, the Columbus Division of Fire has been called to the Premises twenty-eight (28) times in response to drug overdoses.
72. As a result of the influx in criminal activity at the Premises, CPD accompanied Code Enforcement during their 2019 inspections and completed a security assessment at the Premises for the purpose of educating property ownership and management on strategies to reduce criminal activity at the complex.
73. On October 28, 2019 and November 12, 2019, CPD Officers James Poole, Theodore Stacy and Timothy O'Donnell conducted an environmental safety assessment at the Premises. The following issues were identified:
- a. Thirty-two (32) of the fifty-nine (59) pole lights owned by Colonial Village Apartments found in non-working condition.

- b. Officers Poole and Stacy located fifteen (15) City of Columbus owned pole lights located on the Premises and only one (1) found in non-working condition.
 - c. Significant cracks and voids in the door frames of several occupied units.
 - d. Loose and improperly installed door handle screws.
 - e. Old, worn and unsecured windows and window locks.
 - f. Several parked vehicles without parking tags parked in "Parking by permit only" areas.
74. CPD Officers provided written recommendations to property ownership and management based on their observations during the assessment.
75. On or about March 25, 2020, city officials met once again with representatives of Aloft Management (Sylvia Sherman, Steve Mayer and David Helfgott) via phone conference for the purpose of providing updates on progress toward compliance with outstanding code violations and the implementation of new safety protocols at the Premises. During this meeting, Tim Vance communicated to city officials that a new security team had been hired on a temporary basis at the Premises, new cameras purchased for the Premises with a plan to ultimately purchase 80 to 100 more cameras and additional lighting for the complex.
76. On or about April 7, 2020, Tim Vance notified city officials and CPD that Garver Asset Protection LLC (hereinafter "Garver Security") had been contracted to provide private security services at the Premises.
77. On or about June 19, 2020, CPD Officers met with property management to receive training on how to use a new camera system installed at the Premises. CPD Officers were subsequently provided six Apple iPads to ensure 24 hour access to observe conditions at the Premises via the camera system.

78. On or about July 30, 2020, CPD Drug Crimes Bureau (hereinafter "CPD Narcotics") received a complaint regarding narcotics activity at the Premises after complainant's unit had been hit by a stray bullet during a shoot-out. Complainant identified a certain unit having several dope boys running in and out. Complainant also implicated property manager Sylvia as dating one of the "dope boys."
79. On or about August 7, 2020, CPD Officer Theodore Stacy (hereinafter "Officer Stacy") began working special duty two days per week at the Premises.
80. On or about August 24, 2020, Officer Stacy observed several issues related to the living conditions at Colonial Village Apartments, including:
- a. Numerous apartment units at the Premises located on Allendale Dr. with extensive flood damage, including black mold. Said units were reported as vacant and unsecured attracting homeless individuals and prostitutes;
 - b. A strong stench or smell emanating from certain units at the Premises;
 - c. Several broken security lights; and
 - d. Non-payment of Garver Security for services rendered.
81. On or about September 8, 2020, CPD met with Garver Security to discuss concerns regarding Garver Security tactics and the need for additional security support at the Premises.
82. On or about the week of September 13, 2020, property owners hired six CPD officers to conduct special duty at the Premises.
83. Between July 2019 and February 2021, CPD calls for service to the Premises totaled approximately 1,699. CPD was called to the Premises for incidents of violence including but not limited to:
- a. 65 calls for shots fired

- b. 13 shootings
- c. 3 Homicides
- d. 82 gun runs
- e. 20 Felonious Assaults
- f. 9 cuttings/stabbings
- g. 38 fights
- h. 28 Robberies
- i. 13 weapons offenses

84. In late 2020 and despite the significant drop in incidents of violence occurring at Colonial Village Apartments due to hired security and CPD special duty, property owners stopped paying both CPD special duty officers and Garver Security personnel for services rendered.
85. On or about November 25, 2020, CPD suspended special duty services at the Premises due to failure to remit payment in the sum of approximately \$9,396.00.
86. On or about December 29 2020, Garver Security placed a mechanic's lien on the Premises in the amount of \$196,710.38 pursuant to unpaid security services rendered.
87. On or about February 23, 2021, Garver Security suspended services at the Premises for non-payment.
88. On or about February 23, 2021, Officer Stacy again began to receive complaints regarding the living conditions at Colonial Village Apartments, including:
- a. Calls from tenants regarding non-working utilities;
 - b. Rodent and cockroach infestation;
 - c. Lack of internet service causing security cameras at the Premises to be out of service; and

- d. Lack of vendors for maintenance and materials leading to staff at the Premises pulling materials from vacant units to repair occupied units.
89. On or about February 28, 2021, Tim Vance with Housing Crime Consultants, Inc. ended his contract with Colonial Village Apartments.
90. On or about March 1, 2021, Sylvia Sherman contacted CPD Officer Tolber Wendell expressing safety concerns at the Premises. Sherman notified Officer Wendell that maintenance workers were being threatened not to come on to the Premises to perform maintenance activities and employees refused to go onto the Premises for fear of their lives. Sherman referenced lack of support from property ownership as her reason for reaching out to CPD.
91. On or about March 4, 2021, Garver Security resumed services at the Premises conditioned upon a payment agreement entered between property owner and Garver Security in which property owner agreed to pay Garver Security \$10,000.00 on the first of every month toward any outstanding debt in addition to timely payment for continued services at the Premises on a weekly basis.
92. On or about March 4, 2021, Sylvia Sherman notified CPD that she planned to evict at least fifty (50) persons from the Premises.
93. To date, there have been eleven (11) evictions filed by Defendant APEX COLONIAL OH LLC and zero filed since June of 2020.
94. On or about April 4, 2021, Garver Security notified city officials that they would again be suspending services at the Premises as a result of non-payment.

Sentral Hill

95. Sentral Hill is known to CPD and Garver Security for his involvement in several crimes of violence at the Premises.

96. On or about May 5, 2019, CPD was called to the Premises at 1228 Brookway Rd. on report of a person with a gun. Call notes indicate a male black by the name of Sentral Hill threatened caller with a gun.
97. On or about February 1, 2020, CPD was called to the Premises at 3524 Rand Square West on report of Domestic Violence. The suspect, Sentral Hill, was identified as the victim's live-in boyfriend who had been recently released from jail.
98. On or about February 10, 2020, CPD responded to the Premises at 3524 Rand Square West on report of Criminal Damaging. The suspect, Sentral Hill, was accused of ripping off both license plates from the victim's vehicle and "smacking" the front windshield with a broom stick causing cracking to occur.
99. On or about April 5, 2020 and while at the Premises, Sentral Hill fired two rounds of gunfire at a representative of Garver Security. He was subsequently charged with four counts of Felonious Assault (Franklin County Common Pleas Case No. 20 CR 3864).

Dequise Jackson

100. Dequise Jackson is known to CPD and Garver Security for his involvement in several crimes of violence and narcotics trafficking at the Premises.
101. On or about May 16, 2018, while patrolling the area near the Premises, CPD Officers observed a large cloud of smoke after smelling a strong odor of Marijuana emanating from a Grey Nissan Rogue. Officers observed a man later identified as Dequise Jackson seated in the driver's seat of the vehicle. As Officers approached the vehicle, Dequise Jackson began to drive away in the vehicle. Officers followed Dequise Jackson through the Premises and ultimately conducted a traffic stop on Rand Avenue. Dequise Jackson jumped out of the vehicle and began walking away ignoring officer commands and reaching into his waistband. Dequise Jackson was ultimately detained and after a

LEADS check verified that he did not have a valid license, was placed under arrest for No ops, failure to display, not wearing a seatbelt and failure to comply.

102. On or about July 19, 2018, while at the Premises, Dequise Jackson was arrested for possession of cocaine, carrying a concealed weapon and tampering with evidence.
103. On or about September 21, 2018, while patrolling the Premises, CPD Officers observed a man, later identified as Dequise Jackson, driving a gray Chevrolet Captiva in the area of Rand Avenue and Allendale Road. Officers knew from prior experience that Dequise Jackson did not have a valid driver's license. Officers conducted a traffic stop and placed Dequise Jackson under arrest. Subsequent to the arrest, Officers took inventory of the vehicle and recovered a loaded firearm from the center console of the vehicle and two scales containing white residue from the vehicle's trunk.
104. On or about May 29, 2019, Dequise Jackson was arrested at the Premises for driving under suspension, resisting arrest and failure to comply.
105. On or about June 29, 2019, Dequise Jackson was arrested at the Premises. Jackson was and charged with one (1) count of Domestic Violence - Threats and one (1) count of Aggravated Menacing.
106. On or about May 25, 2019, CPD was called to the Premises at 1288 Brookway Rd on report of a fight. Dequise Jackson is listed as a suspect for Aggravated Assault.
107. On or about July 27, 2020, CPD was called to the Premises on report of a sexual assault. Dequise Jackson is the listed suspect.
108. On or about September 4, 2020, CPD was called to the Premises on report of a Trespass. Dequise Jackson is the listed suspect.
109. On or about December 22, 2020, the Columbus Police Drug Crimes Bureau (hereinafter "CPD Narcotics") received a complaint regarding drug activity occurring at the

Premises. Dequise Jackson is identified by the complainant as the individual “running bad drugs with fentanyl in Colonial Village Apartments.”

Nicko Person

110. Nicko Person is known to CPD and Garver Security as a known drug dealer who frequents the Premises for the purpose of selling narcotics.
111. On or about September 9, 2019, CPD conducted a field interview at the Premises. Officers spoke with a female resident of Colonial Village Apartments. During the field interview, the resident told the responding officers that she relapsed on crack and that two males named Nicko and Kountry were trying to take over her apartment to sell narcotics. She further stated that Nicko has the key to her residence and she was scared that if she left with medics, Nicko would let himself back into her apartment and completely take over. Officers identified Nicko as Nicko Person (ID No. 11716C).
112. On or about October 23, 2019, CPD Narcotics received a complaint regarding narcotics activity at the Premises located at 3600 Allendale Drive. Complainant noted that “Niko,” a male black, approximately 6’3” with dreads was the seller. Complainant also noted that the seller is aggressive and had automatic weapons in the unit.
113. On or about April 24, 2020, CPD was dispatched to the Premises on a gun run. CPD Officers conducted an interview of one of the residents at the Premises who stated she bought crack/cocaine off of a person known as “Shireona Brown” but has not paid her yet. Accordingly, Shireona Brown was threatening to have a Grey Malibu pull up with an unknown amount of people with guns. The complainant stated she buys crack from Shireona Brown all the time. Officers spoke to Shireona Brown who stated the complainant owed her \$300 dollars but did not tell Officers for what. Officers noticed

Shireona Brown was with Nicko Person whom officers identified as a known drug dealer in the area.

Isaiah Jackson

114. Isaiah Jackson is known by CPD and Garver Security as an associate of a prominent criminal gang and has been a suspect or arrestee in several incidents of violence at the Premises.
115. On or about April 11, 2019, while patrolling the area near the Premises, CPD Officers observed several individuals standing next to vehicles in the lot near 1239 Brookway Rd. As the individuals noticed the officers, they began walking away in different directions. Officers observed a male who they knew to be Isaiah Jackson, standing on the driver's side door jamb of a red Pontiac Grand Am and leaning into the vehicle. After noticing the officers approaching, Isaiah Jackson locked the vehicle and began walking away. Officers looked through the window of the Pontiac with a flashlight and observed a firearm inside of a drawstring bag. Officers verified the vehicle's owner as Isaiah Jackson. Officers began speaking with Isaiah and advised him to retrieve the keys so officers would not have to force the vehicle door open. Isaiah Jackson was initially reluctant to cooperate with officers until after speaking with Dequise Jackson, Isaiah's cousin, who had returned to the scene. After speaking with Dequise, Isaiah Jackson, complied with officers and surrendered the keys to the vehicle. Officers unlocked the vehicle and removed the drawstring bag. Officers recovered two bags of crack totaling 15 grams, two digital scales, a small baggie of Marijuana, cash and two loaded firearms, one with eight live rounds and one round in the chamber and the other with fifteen live rounds and one round in the chamber. Isaiah Jackson was arrested and slated for possession of crack.

Unknown Persons

116. Several unknown individuals have been reported as repeat suspects involved in or associated with violent crimes or drug activity at the Premises.

CLAIM FOR RELIEF

1. Plaintiff incorporates the proceeding paragraphs 1 through 116 as if fully incorporated herein.

Code Violations

2. The Premises, in its non-compliant state, does not comply with applicable provisions of the Columbus City Code and/or Columbus City Health Code.
3. The Premises, in its non-compliant state, constitutes a public nuisance as defined in C.C.C. §§703.17, 3303.16, 4101.16, 4501.275, 4703.01(F); R.C. §3767.41; and/or common law.
4. Respondents-Defendants (except for those named only as interested parties) have a duty to abate the public nuisance at the Premises by bringing the property into compliance with any and all applicable provisions of the Columbus City Code and/or Columbus City Health Code.

Criminal Activity

5. The Premises is a public nuisance as defined in C.C.C. §4703.01(F); R.C. §§ 2923.43, 3719.10, 3767.01, 3767.12; and/or common law.
6. The Premises is subject to abatement pursuant to C.C.C. §4701.08, R.C. Chapter 3767, and/or common law.
7. Respondents-Defendants (except for those named only as interested parties) are guilty of maintaining a public nuisance at the Premises pursuant to R.C. §3767.02.

8. Respondents-Defendants (except for those named only as interested parties) are further guilty of maintaining a public nuisance at the Premises based on their actual and constructive knowledge of the public nuisance, as well as the well-known general reputation of the premises which is prima-facie evidence of the nuisance and of knowledge of and of acquiescence and/or participation in the public nuisance.
9. Respondents-Defendants (except for those named only as interested parties) own fixtures, furniture, and moveable property at the Premises that have been used or are currently being used in conducting, maintaining, and facilitating said public nuisance.
10. Respondents-Defendants (except for those named only as interested parties) at all times relevant to this action maintained a public nuisance at the Premises threatening the health, safety, and welfare of the People of the City of Columbus, persons at the Premises, and members of the Columbus Ohio Division of Police and Division of Fire.

JUDGMENT AND RELIEF DEMANDED

WHEREFORE, Plaintiff demands judgment as follows:

1. The Court schedule a preliminary injunction hearing on this matter pursuant to R.C. § 3767.04(B) and Ohio Civ.R. 65(B)(1).
2. The Court issue a preliminary injunction pursuant to R.C. § 3767.04(B) and Ohio Civ.R. 65(B)(1) specifically ordering Defendants to:
 - a. Immediately retain or resume private security and/or CPD special duty services at the Premises.

- b. Immediately trespass or cause for the eviction of all known persons contributing to public nuisance conditions at the Premises.
- c. Remediate all outstanding emergency and interior code violations present at the Premises, including the permanent board up of any and all vacant and unsecured units on the Premises, on or before July 30, 2021.
- d. Submit a written plan to both Plaintiff and the Court establishing clear deadlines for the remediation of all non-emergency and exterior violations of Columbus City Code present at the Premises within 60 days of any final order of this Court.

Code Violations

- 3. A determination that the Premises violates applicable provisions of the Columbus City Code and/or Columbus City Health Code.
- 4. The Court order that Respondents-Defendants (except for those named only as interested parties) bring the Premises into compliance with any and all applicable provisions of the Columbus City Code and/or Columbus City Health Code.
- 5. The Court order that Respondents-Defendants (except for those named only as interested parties) and any successor(s) in interest or title are preliminarily, permanently and perpetually enjoined from further violating any and all applicable provisions of the Columbus City Code and/or Columbus City Health Code at the Premises.

Code Violations - Public Nuisance

- 6. A determination that the Premises constitutes and be declared a public nuisance as defined in C.C.C. §§703.17, 3303.16, 4101.16, 4501.275, 4703.01(F); R.C. §3767.41; and/or common law.

7. The Court order that Respondents-Defendants (except for those named only as interested parties) abate the public nuisance located at the Premises.
8. The Court order that Respondents-Defendants (except for those named only as interested parties) are preliminarily, permanently and perpetually enjoined from maintaining a public nuisance at the Premises.
9. The Court order that Respondents-Defendants (except for those named only as interested parties) are preliminarily, permanently and perpetually enjoined from maintaining a public nuisance public nuisance anywhere in Franklin County, Ohio and/or Columbus, Ohio.

Code Violations - Plaintiff to Abate

10. Authorize Plaintiff, Plaintiff's agent pursuant to O.R.C. § 715.261(E), and/or Plaintiff's private contractor to enter onto the Premises and perform abatement activity pursuant to C.C.C. § 4701.08 and O.R.C. §§ 715.26 and/or 715.261, including, but not limited to, demolishing any and all structures located on the Premises.
11. Authorize Plaintiff, and/or its agent pursuant to O.R.C. §715.261(E), to recover the total cost of abatement activity pursuant to C.C.C. § 4701.08, and/or R.C. §§ 715.261(B) including, but not limited to: (1) certifying the costs to the county auditor for placement as a charge upon the Premises' tax list, (2) commencing a civil action, and (3) filing a lien on the Premises and pursuing a foreclosure action for a minimum bid equal to the sum of the taxes, penalties, interest, costs, assessments, total cost of abatement activity and any associated court costs and interest.

Receivership

12. Appoint a receiver, pursuant to O.R.C. §§ 1901.131, 2735.01 and/or 3767.41(C)(3).

13. Authorize said receiver to do any and all acts as the Court deems necessary pursuant to O.R.C. §§ 2735.04 and/or 3767.41 including, but not limited to: (1) repairing or renovating any and all structures on the Premises, (2) demolishing any and all structures on the Premises, and (3) selling the Premises free and clear of any and all liens.
14. Tax as court costs, or otherwise treat as an administrative expense of this matter, pursuant to O.R.C. §§ 2735.04 and/or 3767.41, any funds that are expended by or on behalf of the receiver.
15. Declare, through an enforceable order, that any and all courts costs and administrative expenses of this matter shall have priority over any and all preexisting liens upon the Premises.

Criminal Activity

16. A determination that the Premises constitutes and be declared a public nuisance as defined by C.C.C. §4703.01(F); R.C. §§ 2923.43, 3719.10, 3767.01, 3767.12; and/or common law.
17. A determination that the Premises is subject to abatement under C.C.C. §4701.08, R.C. Chapter 3767, and/or common law.
18. That all Respondents-Defendants (except for those named only as interested parties) be found guilty of maintaining a public nuisance at the Premises.
19. That all Respondents-Defendants (except for those named only as interested parties), and any heirs, successors in interest or title, transferees and/or assigns be preliminarily, permanently and perpetually enjoined from conducting, maintaining, using, occupying, or in any way permitting the use of the Premises as a public nuisance.

20. That all Respondents-Defendants (except for those named only as interested parties) be preliminarily, permanently and perpetually enjoined from conducting, maintaining, using, occupying, or in any way permitting the use of a public nuisance anywhere in Franklin County, Ohio and/or Columbus, Ohio.
21. The Court order, pursuant to ORC 3767.06(A), that Respondents-Defendants (except for those named only as interested parties) abate the public nuisance located at the Premises.
22. The Court order, pursuant to ORC §§3767.05(E)(3) that the Premises not be occupied or used for one year after the judgment is rendered.
23. The Court order, pursuant to ORC 3767.06(A), that the Premises be closed against its use for any purpose for a period of one year.
24. The Court order, pursuant to ORC 3767.06(A), that all personal property and contents used in conducting or maintaining the public nuisance at the Premises be removed and sold, without appraisal, at a public auction to the highest bidder for cash.
25. That the Court tax Respondents-Defendants (except for those named only as interested parties) \$300 in accordance with Revised Code §3767.08.

Receivership

26. Appoint a receiver, pursuant to O.R.C. §§ 1901.131, 2735.01 and/or 3767.41(C)(3).
27. Authorize said receiver to do any and all acts as the Court deems necessary pursuant to O.R.C. §§ 2735.04 and/or 3767.41 including, but not limited to: (1) repairing or renovating any and all structures on the Premises, (2) demolishing any and all structures on the Premises, and (3) selling the Premises free and clear of any and all liens.

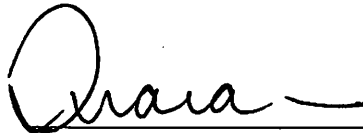
28. Tax as court costs, or otherwise treat as an administrative expense of this matter, pursuant to O.R.C. §§ 2735.04 and/or 3767.41, any funds that are expended by or on behalf of the receiver.
29. Declare, through an enforceable order, that any and all courts costs and administrative expenses of this matter shall have priority over any and all preexisting liens upon the Premises.

Additional Relief

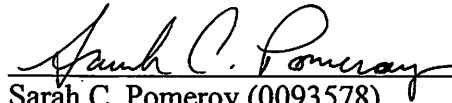
30. An award of Plaintiff's costs and attorney's fees payable by defendant(s).
31. The Court grant Relator-Plaintiff all such further equitable and other relief this Court determines Relator-Plaintiff to be entitled pursuant to ORC 1901.131, and by law.

Respectfully submitted,

City of Columbus, Department of Law
Zach Klein City Attorney



Tiara N. Ross (0089583)
Assistant City Attorney
375 South High Street, 17th Floor
Columbus, Ohio 43215
Phone: (614) 645-0781
tnross@columbus.gov
Counsel for the Plaintiff



Sarah C. Pomeroy (0093578)
Assistant City Attorney
375 South High Street, 17th Floor
Columbus, Ohio 43215
Phone: (614) 645-6548
scpomeroy@columbus.gov
Counsel for the Plaintiff

CERTIFIED MAIL

IRST CLASS



U.S. POSTAGE >> PITNEY BOWES



ZIP 43215 \$ 007.35⁰
02 1W
0001398192 APR 15 2021

AFTER 7 DAYS RETURN TO SENDER

NAME _____
1ST NOTICE _____
2ND NOTICE _____
RETURN _____

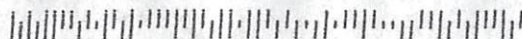


Exhibit 2

EFM TRANSFER AGENT, LLC, :
 :
 Plaintiff, : **Case No.** :
 :
 v. : **Judge** :
 :
 APEX COLONIAL OH LLC, et al., :
 :
 Defendants. :

[illegible]

1. I make this Affidavit in support of the Joint Motion of Plaintiff EFM Transfer Agent, LLC (“EFM”) and Interested Party City of Columbus (the “City”) for the Appointment of a Receiver (the “Joint Motion”).

3. EFM and the City propose that I serve as the receiver for the Premises, as defined in the Joint Motion.

5. I am an Ohio resident.

6. I currently serve as the Chairman of the Board of the Robert Weiler Company, a corporation formed under Ohio law.

7. I hold a doctoral degree in finance from The Ohio State University and received MAI and SREA designations from the Appraisal Institute.

8. I have served as the Chairman of the Ohio Real Estate Appraiser Board and as the President of the Ohio Chapter of the Appraisal Institute and the Columbus Board of Realtors.

9. I do not have any personal or financial interest in the Premises and am a disinterested party to this matter.

10. For my time spent serving as the receiver of the Premises, I anticipate being compensated \$400 per hour.

11. Attached as **Exhibit 1** is a true and accurate copy of my entire fee arrangement, including all expense reimbursements and any commissions contemplated for leasing or selling property, in connection with the Premises.

12. Pursuant to Franklin County Common Pleas Court Local Rule 66.04(C), I acknowledge that upon accepting the appointment as the receiver over the Premises, I will:

- a. Act in conformity with Ohio law and the Court's local rules;
- b. Deposit all funds coming into my hands into a separate trust account for the estate, with full contemporaneous record-keeping for all funds;
- c. Avoid any conflict of interest;
- d. Not directly or indirectly pay or accept anything of value that has not been fully and timely disclosed and formally approved by the Court;
- e. Not directly or indirectly purchase, acquire, or accept any interest in the property managed, appraised, or sold through the receivership; and

f. Otherwise act in the best interests of the estate.

13. If the Court appoints me receiver over the Premises, I anticipate entering into the attached Property Management Agreement (the "PMA") with Hayes Gibson Property Services, LLC and Exclusive Right to Sell or Lease Listing Contract (the "Listing Contract") with The Robert Weiler Company.

14. Attached as **Exhibit 2** is a true and accurate copy of the PMA.

15. Attached as **Exhibit 3** is a true and accurate copy of the Listing Contract.

Further affiant sayeth naught.


Signature

Robert Weiler
Printed Name

Sworn to before me and subscribed in my presence this 25 day of August 2021.




Notary Public

EXHIBIT 1

Receiver Robert J. Weiler, Sr.'s Compensation and Approved Expenses

\$400 per hour plus extraordinary out of pocket expenses necessary for the Receiver to perform his functions and as approved by the Court and EFM. Fee applications shall be submitted monthly to the Court and EFM for approval.

The Receiver shall not receive any compensation for the listing and sale of the property which is subject of this action. All such compensation shall be paid to the Exclusive Listing Agent per a separate agreement.

EXHIBIT 2

PROPERTY MANAGEMENT AGREEMENT

This Property Management Agreement ("Agreement") is entered into as of the ____ day of **August, 2021**, by and between **Robert J. Weiler, Sr. of The Robert Weiler Company** as Court Appointed Receiver for certain property known as **Colonial Village Apartments, Columbus, Ohio**, pursuant to a Court Order entered in the **Franklin** County Court of Common Pleas (Case No. ____), whose address is **10 N. High Street, Suite 401, Columbus, Ohio 43215** ("Receiver") and Hayes Gibson Property Services, LLC, a Delaware limited liability company, whose address is 2565 South Breaking A Way, Suite 200, Bloomington, IN 47403 ("Manager").

W I T N E S S E T H

In consideration of the mutual promises and covenants contained herein, the parties agree as follows:

Article 1 Appointment of Agent.

1.1 **Appointment.** Receiver hereby hires and designates Manager as the sole and exclusive managing agent for the property known as **Colonial Village Apartments**, as listed in Exhibit C (the "Property") for the Term (as defined in Section 5.1 below), and Manager hereby accepts such appointment, upon the terms and conditions contained herein.

1.2 **Acceptance of Property.** Manager shall promptly, upon execution hereof, inspect each unit and common facility at the Property and ascertain its general condition. With respect to any unit or facility in the Property found to be in need of repairs, within **sixty (60)** days from the date hereof Manager shall prepare a written report of recommended repairs and the estimated cost thereof required to bring the Property into compliance with Section 2.2 below. Subsequent reports of unfinished work shall be furnished to Receiver, on a monthly basis, until all such work has been corrected or accepted by Receiver. The Property has severe non-compliance with code but also has serious crime and safety issues. Manager shall prioritize the safety of current residents over the repair of units except where repairs are necessary to preserve life safety.

In order to facilitate efficient operation, Manager will inform itself with respect to the layout, construction, location, character, plan, and operation of the lighting, life safety, heating, plumbing, security and ventilating systems, as well as elevators and escalators, if any, and other mechanical equipment at the Property. To the extent in Receiver's possession, copies of guarantees and warranties pertinent to the equipment at the Property and in force at the time of execution of this Agreement may be furnished by Receiver to Manager, who will review them and remain familiar with their requirements and expiration dates and will be responsible for their safekeeping. Manager will further be similarly responsible for the safekeeping of copies of any construction plans and "as-built" drawings furnished to it by Receiver.

1.3 **Designation of Receiver Representative.** Receiver hereby designates **Robert J. Weiler, Sr.**, to serve as the Receiver's representative in all dealings with Manager hereunder. Whenever the approval, consent or other action of Receiver is called for hereunder, such approval, consent or action shall be binding on Receiver if such is specified in a writing, which is executed by said representative. Said representative may be changed at any time in the sole discretion of the Receiver, by written notice to Manager, effective upon receipt by Manager.

- 1.4 **Designation of Manager Representative.** Manager hereby designates Alexandra S. Jackiw, CPM®, to serve as the Manager's representative in all dealings with Receiver hereunder. Whenever the approval, consent or other action of Manager is called for hereunder, such approval, consent or action shall be binding on Manager if such is specified in a writing, which is executed by said representative. Said representative may be changed at any time in the sole discretion of the Manager, by written notice to Receiver, effective upon receipt by Receiver.
- 1.5 **Ability to Perform Services in Ohio.** Manager represents and warrants that it is qualified to do business in Ohio and meets all requirements of the Ohio Division of Real Estate to lawfully provide the third party management of real estate in Ohio. Manager's brokerage license number in Ohio is _____.

Article 2 Services to be Performed.

Manager agrees to perform the following management services pertaining to the Property:

- 2.1 **Employment of Personnel.** At Receiver's direction and expense, on the basis of the operating plan, schedule of job descriptions and requirements and schedule of wage rates and other compensation previously approved by Receiver, as set forth in the Budget referred to in Section 2.10 below, Manager shall, as agent for Receiver, investigate, hire, pay, supervise and discharge the personnel necessary to be employed in order to properly maintain and operate the Property, including, without limitation and if Manager deems appropriate, and the same is provided for in the Budget, a full-time Property Manager. Manager shall not discriminate against any employee or applicant for any term or condition of employment on the basis of any protected class. Such personnel shall in every instance be deemed employees or independent contractors of Manager and not of Receiver. Manager shall have the express right to directly hire, fire, supervise and direct such employees or independent contractors. All salaries, wages, and other compensation of personnel employed by or contracted by Manager hereunder, including a Property Manager, and including so-called fringe benefits, vacation pay, life, disability, medical and health insurance, pension plans, social security, taxes, Worker's Compensation Insurance and related items, shall be Manager's expenses; provided, however, that Receiver shall reimburse Manager for the aforementioned expenses as provided herein and pursuant to an approved budget.

In addition, certain services to the Property may be provided by employees of Manager, and the cost of such services, based on the hourly rate established by Manager for such employees, shall be Receiver's expenses (said rates are attached hereto as Exhibit "A").

- 2.2 **Maintenance and Repair of Property.** At Receiver's expense, Manager shall cause the Property to be maintained according to standards established by the Receiver, including, but not limited to, interior and exterior cleaning, repairs and alterations, plumbing, carpentry and decorating, and such other normal maintenance and repair work as may be deemed desirable or necessary by Manager, subject only to the limitations of the current Budget approved by Receiver and any other limitations imposed by Receiver in addition to those contained herein. For any other item of repair or maintenance involving a single expenditure in excess of **Ten Thousand Dollars (\$10,000.00)**, or annually in the aggregate of One Hundred Thousand Dollars (**\$100,000.00**), except as previously approved in the annual Budget, the prior written approval of Receiver must be obtained; provided,

however, emergency repairs immediately necessary for the preservation or safety of the Property or for the safety of the tenants or other persons or required to avoid the suspension of any necessary service to the Property may be made by Manager without the prior written approval of the Receiver; and provided further, that Receiver agrees to approve any expenditure necessary to prevent Manager from being exposed to liability to third parties, except due to Manager's gross negligence or willful misconduct. Notwithstanding this authority as to emergency repairs, it is understood and agreed that Manager shall confer as soon as possible with Receiver regarding every such expenditure.

Manager shall be entitled to a fee for all construction management services and major capital work performed. The scope of the work and the associated fee is outlined in Exhibit A.

Manager agrees not to permit the use of the Property for any purpose which might void or cause an increase in the premium for any policy of insurance held by Receiver or Manager, or which might render any loss thereunder uncollectible, or which would be in violation of any Legal Requirements (as defined in Section 2.3 below) or other restriction or under any mortgage of the Property. Manager shall to the best of its ability ensure that all tenants are in full material compliance with the terms and conditions of their respective leases and with all Legal Requirements, and to this end, Manager shall see that all tenants are informed with respect to such rules, regulations and notices as Receiver shall require Manager to promulgate.

- 2.3 **Compliance with Legal Requirements.** At Receiver's expense, Manager shall use its best efforts to comply with any and all orders or regulations pertaining to the Property promulgated by any federal, state, county or municipal authority having jurisdiction thereover ("Legal Requirements"), subject to the limitation on repair or maintenance expenditures set forth in Section 2.2 above. Manager acknowledges that the Property is subject to a number of code violation orders. Manager shall not take any such action, however, as long as Receiver is actively contesting or has expressed an intention to contest and promptly institutes proceedings contesting any such order or requirements; provided that, if failure to comply promptly with any such order or requirement would or might expose Manager to criminal liability, Manager may cause the same to be complied with, without the Receiver's approval, and, in such event, Manager shall notify Receiver promptly and in no event later than twenty-four (24) hours from time of receipt of any such order or notice of requirement in writing. Manager hereby represents and warrants to Receiver that it holds all licenses required by all applicable Legal Requirements to act as a property manager in the jurisdiction in which the Property is located and will continue to hold such licenses during the entire Term of this Agreement. Manager shall comply with provisions of the Order appointing the Receiver relating to property management.

- 2.4 **Service Contracts.** On behalf of and as agent for Receiver, and as provided in the Budget, Manager shall enter into or renew contracts for electricity, gas, steam, telephone, water, cleaning, fuel, oil, elevator and escalator maintenance, pest extermination, trash removal and other services deemed necessary or advisable by Manager, subject to Receiver's direction, for the operation of the Property; provided, however, that if providers of goods and services shall require that Manager contract in Manager's own name, Manager may do so within the scope of the authority granted to Manager by Receiver hereby. Subject to the limitations of the current Budget, Manager shall also purchase all supplies, equipment, tools, appliances and materials, which Manager shall deem necessary to maintain and operate the Property. All such contracts, unless otherwise approved by Receiver, shall be

terminable by either party upon not more than thirty (30) days' written notice. Manager shall also acquire in Receiver's name such equipment, tools, appliances, materials and supplies as are necessary to properly maintain the Property, subject to limitations of the current Budget. When taking bids or issuing purchase orders, Manager shall act at all times under the direction of Receiver and shall be under a duty to secure for and credit to Receiver any discounts, commissions, or rebates obtainable as a result of such purchases.

In making payments to any party under any such contract, or to any other vendor, Manager shall, if and as directed by Receiver, withhold a portion of such payments as back-up withholding in accordance with the Internal Revenue Code.

- 2.5 **Collection of Rents and Institution of Legal Proceedings.** Manager is hereby authorized to and shall collect all rent and other charges due from tenants, lessees, licensees or similar entities and otherwise due Receiver with respect to the Property in the ordinary course of business. Receiver authorizes Manager to request, demand, collect, receive and receipt for all such rent and other charges and, upon Receiver's prior approval, to institute legal proceedings in the name of and as an expense reimbursable by Receiver for the collection thereof and for the dispossession of tenants and other persons from the Property, and such expense may include the engaging of legal counsel selected by Receiver for any such matter, which counsel shall be subject to Receiver's reasonable approval. Manager shall promptly notify Receiver of any disputes with tenants or other parties (including, but not limited to, threatened or actual suits).
- 2.6 **Signage.** Manager may place and remove or cause to be placed and removed at Receiver's expense such signs upon the Property as Manager shall deem appropriate, including signs, banners or stickers on or about the Property stating that the Property is under the management of Manager, subject to applicable governmental sign ordinances, statutes and regulations.
- 2.7 **Payments by Manager.** To the extent funds are available in the operating account held by Manager with respect to the Property pursuant to Section 2.8 below, Manager shall, on behalf of Receiver and, pursuant to the Budget, pay, before delinquency:
- (a) All expenditures required to be made in performance of the services specified in Sections 2.1 through 2.6 above;
 - (b) Upon the issuance of an order of the Court permitting the distribution of proceeds to the Lender, all debt service payments on mortgage loans covering the Property (including therein amounts due under any note and mortgage for interest, principal and reserves or escrow funds);
 - (c) The amount of all real estate taxes and assessments levied against the Property which, if not escrowed with any mortgagee or land contract vendor, shall be paid by Manager, before interest and penalties shall begin to accrue thereon. Manager will communicate with the Franklin County Treasurer as to a realistic payment plan for real estate taxes which currently are in arrears; and
 - (d) Amounts otherwise due and payable as operating expenses of the Property incurred under the terms of this Agreement, including the Manager's compensation and insurance premiums pursuant to Section 4.1 below.

Subject to the above restrictions, any payments made by Manager hereunder shall be made at Manager's discretion subject to direction by Receiver as to order or priority out of such funds as Manager may from time to time hold for the account of Receiver as specified in Section 2.8 below, or as may be provided by Receiver. Manager will project the cash requirements for the Property in the Budget. For each month during the Term hereof that Manager reasonably determines that collections will be insufficient to meet such cash requirements, Manager shall request additional funds from Receiver therefor. Receiver agrees to deposit the amount of funds so requested by Manager in the operating account of Manager referred to in Section 2.8 below upon Court approval with no less than thirty (30) days' notice. If at any time there is not sufficient cash in the operating account to pay all bills due and owing on the Property promptly, the Manager will request that the necessary additional funds be deposited by Receiver in said account. Receiver agrees to deposit such additional funds within thirty (30) days thereafter, or as soon as funded by the Lender or Special Servicer. Manager shall not be obligated to make any advance to or for the operating account maintained by Manager pursuant to the terms hereof, nor shall Manager be obligated to incur any liability or obligation for the account of the Receiver without assurance that the necessary funds for the discharge thereof will be provided; however, if Manager shall voluntarily advance for Receiver's account with Receiver's permission any amount for the payment of any necessary expense connected with the maintenance or operation of the Property in accordance with this Agreement, Manager shall give Receiver prompt notice thereof, and Receiver shall reimburse Manager therefor promptly on demand with interest thereon at a rate per annum equal to three (3) percentage points in excess of the rate then announced by the Wall Street Journal as its "prime" or base rate, from the date such payment is made by Manager. Any sums due Manager hereunder may be collected by Manager from future rental or other payments collected by Manager from the Property.

- 2.8 **Bank Accounts.** All funds collected by Manager for the account of Receiver shall be held in trust and deposited in a federally insured depository institution of Manager's choosing, referred to herein as the operating account. All funds in such account shall be the property of Receiver, subject to the express rights of Manager provided herein.
- 2.9 **Tenant Security Deposits.** To the extent available, Receiver shall provide Manager a complete and accurate accounting for all tenant security deposits as of the commencement of the Term. The total amount of such deposits will be delivered to Manager by Receiver on or before the commencement of the Term, which shall be held by Manager in a separate security deposit account, on behalf of Receiver. Manager may pay such deposits to tenants at the expiration of the terms of their leases or at such other times as they may become entitled thereto, as shall be determined by Manager, and Manager may deduct from such deposits appropriate amounts determined by Manager pursuant to the terms of the lease agreement with such tenants, subject to applicable laws regulating security deposits.
- 2.10 **Annual Budget.** Within sixty (60) days after the execution of this Agreement, Manager will prepare for Receiver's approval the annual business plan and budget ("Budget" or "budget") for the first fiscal year or partial fiscal year of the Term. The fiscal year of the Property shall be January 1 to December 31, subject to the right of Receiver to change such fiscal year from time to time. At least ninety (90) days prior to the expiration of each fiscal year of the Term, Manager shall prepare and submit to Receiver the annual budget in draft form for the next fiscal year. The annual budget shall include, but not be limited to, anticipated gross revenues, operating expenses, capital expenditures, debt service payments, management fees and reserves, taking into account without limitation, the general condition of the Property, the expected rate of completion of contemplated repairs

and the occupancy, physical condition of and rentals charged in the competing projects in the area.

Receiver shall have the right to make any reasonable changes or modifications to the draft business plan and budget within thirty (30) days following receipt of same, but no such changes or modifications may alter the payments otherwise due Manager as fees or reimbursement under this Agreement. The budget revised by the Receiver shall be subject to Manager's approval, which shall not be unreasonably withheld. In the event Receiver and Manager shall not reach agreement upon a budget within thirty (30) days of Manager's submission of the initial draft budget or within twenty (20) days following Receiver's submission of a revised budget to Manager, this Agreement may be terminated as a permitted termination by either party by written notice to the other party within ten (10) days thereafter, which termination shall be effective as of the last day of the then current fiscal year. Each such budget, following its approval by Receiver as submitted or as modified as the case may be, shall constitute the "Budget" for the fiscal year covered thereby and shall constitute a standard to which Manager shall adhere. Approval of the annual budget by Receiver shall also constitute Receiver's authorization to Manager to make all those expenditures provided for in the Budget, subject to all terms and conditions contained in this Agreement.

2.11 **Transfer of the Property.** If Receiver decides to sell, mortgage or otherwise transfer the Property or any part thereof or interest therein, or otherwise at Receiver's reasonable request, Manager shall comply in timely manner with all reasonable requests of Receiver in connection with such proposed transfer, including without limitation the following:

- (a) As directed by Receiver, Manager will cooperate and assist in the marketing of the Property;
- (b) Manager will provide a current rent roll stating, for each unit the name of the tenant, the expiration date of the lease, the amount of the security deposit (if any), the date to which rent is paid, any renewal, extension or expansion options or any unexpired tenant incentives, and whether any defaults are known to exist, and Manager will represent and warrant the accuracy of such information to Receiver and to any such proposed transferee;
- (c) Manager will provide a list of threatened or actual suits or other action by private parties or governmental entities, including a factual summary of each such matter, and Manager will represent and warrant the accuracy of such information to Receiver and to any such proposed transferee;
- (d) Manager will provide an updated schedule of personal property belonging to the Property and Manager will represent and warrant the accuracy of such information to Receiver and to any such proposed transferee; and
- (e) Manager will allow Receiver and/or any such proposed transferee to have access to all records for the Property.

2.12 **Leasing of Property.** Manager shall confirm that all commercial tenants of the Property are maintaining insurance in accordance with the requirements of their respective leases.

- 2.13 **Additional Services.** Manager shall provide such additional services as may be described in the attached Exhibit “B” or as may be otherwise agreed upon.

Article 3 Manager's Compensation.

- 3.1 **Amount of Compensation.** Throughout the Term, Receiver shall pay Manager as compensation for the management services rendered hereunder an amount computed and payable monthly which shall be designated “Management Fee” and which shall be equal to the greater of **Fifteen Thousand** Dollars (**\$15,000.00**) or **Four** Percent (**4%**) of the Gross Receipts, as hereafter defined, derived from the Property, for each month. Management is also entitled to receive additional compensation as described in the attached Exhibit “A”.

- 3.2 **“Gross Receipts” Defined.** The term “Gross Receipts” shall mean and include all gross receipts derived from the operation of the Property, including, without limitation, all rent and other sums and charges received from all prospective tenants, tenants and lessees and payments made in consideration of the cancellation of any tenant leases or damages by reason of any default, security deposits to the extent applied to rent, tenant application fees, late rent charges, NSF check charges, miscellaneous administrative charges, utility reimbursement, the proceeds from rental interruption insurance, net receipts from vending machines, concessions and other commercial operations conducted on the Property.

“Gross Receipts” shall not include sums which, under normal accounting practice are attributable to capital, proceeds of claims on account of insurance policies other than rental interruption or similar insurance, the abatement of taxes, awards arising out of taking by eminent domain, discounts and dividends on insurance policies, nor shall “**Gross Receipts**” include sums received by Manager as reimbursement or recovery of items of expense charged the Receiver, such as court costs paid by defaulting tenants, security deposits (to the extent applied to damage) and the like, all of which shall be applied as offsets against the corresponding items of expense.

3.3 **Reports.**

- (a) **Monthly Statements.** Once within each accounting month by no later than the 20th day of the month during the term of this Agreement, commencing with the first full calendar month following the commencement of this Agreement, and within the first full calendar month following the termination of this Agreement, the Manager shall furnish to Receiver a true, correct and complete unaudited statement of cash flow for the preceding calendar month. Notwithstanding anything to the contrary contained herein, Manager shall assist Receiver in submitting an initial report and subsequent monthly reports in accordance with the terms of any court requirement.
- (b) **Annual Reporting.** Manager shall deliver to Receiver within ninety (90) days after the end of each fiscal year of the Property, a Profit and Loss Statement showing the results of operations for that fiscal year and a Balance Sheet of the Property as of the end of that fiscal year, both in form satisfactory to Receiver and certified by Manager at the expense of Receiver. Manager shall also deliver to Receiver within thirty (30) days after the end of each fiscal year a current rent roll of the Property that includes the information specified in Section 2.11(b) above.

- (c) **Tenant Complaints.** Manager shall maintain businesslike relations with tenants, whose service requests shall be received, logged and considered in systematic fashion in order to show the action taken with respect to each. Complaints of a serious nature shall, after thorough investigation, be reported to Receiver with the results of such investigation and appropriate recommendations.
- (d) **Returns Required by Law.** Manager, as Receiver's agent, shall execute and file punctually when due all forms, reports, and returns required by law or by any lender with loans against the Property relating to the employment of personnel and the operation of the Property.

3.4 **Remittance of Funds to Receiver.** The Manager shall simultaneously with the delivery of the monthly reports, but in no event later than the 25th of each month, pay over in accordance with directions reasonably given by Receiver's representative the amount of Gross Receipts for such preceding calendar month less:

- (a) all expenses incurred, including any and all Court approved debt service,
- (b) the Management Fee specified herein, and
- (c) any agreed-upon sums to be reserved for future expenses.

3.5 **Expenses.** Manager shall be responsible for its office expenses, other than the direct operating expenses of the Property and the cost of services of Receiver's employees to the extent rendered for the benefit of the Property.

It is agreed that Receiver shall reimburse Manager and its affiliates for actual, reasonable and necessary out-of-pocket costs which they shall incur as operating expenses in connection with the performance of this Agreement. Manager shall have the discretion, exercised reasonably, to determine the necessity for the expenditure of any such amounts, which shall include, without limitation, reasonable travel, meals, lodging, telephone, electronic communications, postage, air expenses, costs of recruitment (including applicable agent's fee) and other incidental expenses; providing that such reimbursed expenses shall be set forth in the Budget and that none of the foregoing expenses shall be considered Manager's office expenses. It is agreed that Manager shall be entitled to reimbursement of these expenses directly from the Property account at the time incurred. Such reimbursements shall be in addition to the management fee.

3.6 **Books and Records.** Manager agrees to keep and maintain a proper and adequate system of books of accounts and records, all satisfactory to Receiver and in accordance with the cash method of accounting, so as to show accurately and completely all Gross Receipts from and expenses incurred with respect to the Property, and to preserve the same for a period of at least three (3) years after the close of the calendar year to which they relate. Manager further agrees to permit the Receiver and/or its accountants and authorized representatives to examine and copy during regular business hours all books and records of the Manager in any way pertaining to Gross Receipts and expenses and operation of the Property. Manager agrees to keep all financial information concerning the Property confidential at all times during and after the Term of this Agreement, except as expressly authorized in writing by Receiver, or unless Manager shall be under compulsion of legal process to disclose such information. In the event Manager is compelled by legal process

to disclose such information, Manager shall provide prompt prior notice of the same to Receiver.

Article 4 Insurance.

- 4.1 **Insurance Requirements.** Receiver shall cause to be placed, or direct Manager to obtain, insurance in such amounts and coverages, limits and deductibles as shall be reasonably required by Receiver and, if applicable, any mortgagee of the Property, to protect the Property, Receiver and any such mortgagee. Such insurance shall include, but not be limited to workers' compensation insurance, commercial general liability insurance, boiler insurance, fire and extended coverage insurance, fidelity bonds and burglary and theft insurance and rental interruption insurance, and such insurance shall be maintained throughout the Term hereof as an expense of the Property. The foregoing commercial general liability policy shall name Receiver as insured and Manager and any mortgagee of the Property as additional insureds. Manager shall additionally maintain throughout the Term policies of (a) workers' compensation insurance in accordance with statutory requirements, (b) employer's liability insurance with limits of not less than One Million Dollars (\$1,000,000) per occurrence, (c) commercial general liability insurance for bodily injury, personal injury and property damage covering the acts or omissions of Manager, its agents and employees with limits of not less than Two Million Dollars (\$2,000,000) per occurrence, and (d) automobile liability insurance for any owned, hired and non-owned automobiles with limits of not less than Two Million Dollars (\$2,000,000) per occurrence, with Manager named as the insured under each policy and Receiver and any mortgagee of the Property listed as an additional insured under the commercial general liability policy. All insurance procured under this Section 4.1 shall be written on an occurrence basis and procured from companies rated by Best's Rating Guide no less than A-/VII, and which are authorized to do business in the state where the Property is located. Upon Receiver's request, Manager shall provide Receiver with copies of insurance certificates evidencing the insurance required under this Section 4.1. Any insurance obtained by Manager or its agents in accordance with this Agreement will be an expense of the Property and shall be paid directly by Manager.
- 4.2 **Insurance Claims.** Manager shall promptly investigate and make a full written report to Receiver as to all accidents or claims for damage or injury relating to or occurring at the Property, and any damage or destruction to the Property and its estimates of the cost of repair thereof and shall prepare for approval by Receiver any and all claims and all reports required by any insurance company in connection therewith, which claims and reports shall be Manager's responsibility to file in a prompt manner. All such reports shall be filed with Receiver promptly, and in any event within two (2) business days after the occurrence of any such accident, claim, damage, or destruction of a material nature, which shall also be noted in the monthly report delivered to Receiver pursuant to Section 3.3(a) above. Manager is not authorized without Receiver's prior written consent to settle any and all claims against insurance companies for damages to the Property arising out of any policies, including the execution of proofs of loss, the adjustment of losses, the signing of receipts and the collection of money. All claims with respect to personal injury, or damage to property other than the Property, shall be promptly referred by Manager to Receiver for further action and Manager shall use its best efforts to refer these claims to Receiver within one week of notification by the claimant.
- 4.3 **Restrictions in Use of Property Related to Insurance Coverage.** Manager agrees not to permit the use of the Property for any purpose which might void or cause an increase in

the premium for any policy of insurance held by Receiver or Manager, or which might render any loss thereunder uncollectible, or which would be in violation of any legal requirement under any law, ordinance or regulation or other restriction or under any mortgage of the Property. Manager shall to the best of its ability ensure that all tenants are in full material compliance with the terms and conditions of their respective leases and with all legal requirements, and to this end, Manager shall see that all tenants are informed with respect to such rules, regulations and notices as Receiver shall require Manager to promulgate.

- 4.4 **Deductibles; Self-Insured Retention.** Receiver acknowledges that Manager may have available to it various insurance programs in which Receiver may participate. Such insurance programs may be subject to various deductibles or self insured retentions. If Receiver elects to participate in one of these programs and such program includes a deductible or self insured retention, Receiver and Manager shall enter into a separate agreement to govern the assessment and payment of amounts within the deductible or self insured retention.
- 4.5 **Indemnity.** Manager shall indemnify, defend and hold Receiver harmless from and against any and all claims, actions, damages, liabilities and expenses (including reasonable attorneys' fees and court costs) which result from or are caused by the intentional misconduct, negligence or fraud of the Manager, its agents and employees or Manager's breach of this Agreement.

Article 5 Term of Agreement.

- 5.1 **Term.** The term of this Agreement (the "Term") shall commence as of **the Court appointment of the Manager** and shall thereafter continue for a period of one (1) year, unless sooner terminated according to the terms hereof.
- 5.2 **Termination.** This Agreement shall terminate as provided below:
- (a) **Expiration of Term.** Upon expiration of the Term hereof, if the Court approves provided that the Receiver or Manager shall give notice to the other party of its intent to terminate, not less than thirty (30) days prior to the end of the then current one-year period; otherwise, this Agreement shall renew automatically for additional one (1) year periods upon the same terms as contained herein.
 - (b) **Default.** Upon Manager's or Receiver's default hereunder, provided that the Manager or Receiver, as the case may be, does not cure such default within ten (10) business days from receipt of written notice from the other party of such default; provided, however, if such breach cannot be reasonably cured within said ten (10) business days period, and if reasonable efforts to cure said breach have been commenced within said ten (10) business days and continue to be pursued with due diligence to conclusion, then such breach shall not constitute a basis for termination hereof, unless the default is not cured within a reasonable time.
 - (c) **Sale.** Immediately upon the sale of the Property or termination of Receivership, subject to Section 5.6 below.

Termination of this Agreement hereunder shall not release either party from liability for failure to perform any of the duties or obligations as expressed herein and required to be performed by such party for the period prior to such termination.

5.3 **After Termination.** Upon termination of this Agreement as provided herein, and after payment to Manager of all amounts owed it by Receiver under this Agreement, Manager shall forthwith:

- (a) **Deliver the Property.** Surrender and deliver up to the Receiver the Property and all rents and income of the Property on hand and in any bank account which are monies of the Receiver, including tenant security deposits, to the extent not previously credited to the Receiver, after compliance with any notice requirements provided by law.
- (b) **Monies Received After Termination.** Deliver to Receiver as received any monies received by Manager after termination.
- (c) **Supplies.** Deliver to Receiver all materials, supplies, keys, contracts and documents, and such other accountings, papers and records pertaining to this Agreement as Receiver shall reasonably request.
- (d) **Contracts.** Assign such existing contracts relating to the operation and maintenance of the Property as Receiver shall require, which by their terms as assignable, provided that the Receiver herein shall agree to assume all liability thereunder.

Manager's obligation to provide reports and accountings pursuant to Section 3.3 above shall survive termination of this Agreement.

5.4 **Notification of Tenants.** Immediately after the termination of this Agreement or upon the sale of the Property, Receiver and Manager shall notify each tenant of the Property of such termination or sale. Such notice shall identify the name and address of the new owner or manager, as the case may be, of the Property, and shall direct each tenant with respect to the future payment of rent. This notice will be coordinated with the new buyer. Upon termination of this Agreement, Manager shall transfer the control of the account, if any, containing tenant deposits to Receiver, or as directed by Receiver, and the notice to tenants required by this Section 5.4 shall specify the person to whom inquiries regarding such deposits should be directed, and shall otherwise comply with applicable law.

5.5 **Assignment by Receiver.** Receiver may assign its rights and obligations hereunder to any successor entitled to the Property, and upon such assignment, Receiver shall be relieved of all liabilities accruing after the effective date of such assignment; provided, however, that no transfer of the Property and/or assignment of this Agreement shall relieve the Receiver of liability hereunder unless such assignee or transferee of the Property shall expressly assume the obligations of the Receiver hereunder in writing. Upon assignment or transfer of the Property, Receiver shall promptly comply with the notice provisions of Section 5.4 above and of all applicable laws. In the event the Property shall now or hereafter be subject to an assignment of rents and leases for security purposes, the provisions of this Section 5.5 shall apply upon the exercise by the assignee under such assignment of its rights thereunder, in the same manner as if the Property itself were transferred as of the date of such exercise.

- 5.6 **Post-Termination Matters.** Upon any termination or expiration of this Agreement for any reason whatsoever, Receiver expressly agrees that Manager may remove any of its documents which are proprietary to Manager (including, without limitation, equipment, employee files, manuals, software programs, stored data and internal correspondence or a proprietary nature) but specifically excluding financial records, documents, correspondence or other materials proprietary to the Property which shall be deemed property of Receiver. Manager shall have the right to make copies of all other non-proprietary files and information relating to its management of the Property.

Article 6 Notices.

All notices, demands, consents, approvals, reports and other communications provided for in this Agreement shall be in writing and shall be given to Receiver or Manager at the address and/or email address set forth below or at such other address and/or email address as they may specify hereafter in writing:

RECEIVER: The Robert Weiler Company
10 N. High Street, Suite 401
Columbus, OH 43215
Email: bob@rweiler.com
Attn: Robert J. Weiler, Sr.

MANAGER: Hayes Gibson Property Services, LLC
2565 South Breaking A Way – Suite 200
Bloomington, IN 47403
Email: ajackiw@hayesgibson.com
Attn: Alexandra S. Jackiw, CPM®

Any notice, request, demand, approval or consent given or required to be given under this Agreement shall be in writing and shall be deemed to have been given if and when posted in the United States registered or certified mail, return receipt requested, delivered by reputable national overnight courier, postage or fees prepaid or sent via electronic mail. Notices shall be deemed received upon the earlier of actual receipt, whether delivered by hand delivery, express services or electronic mail, or two (2) business days following the day mailed by certified mail.

Article 6 Miscellaneous.

This Agreement shall be governed by and interpreted in accordance with the laws of the State of **Ohio**, without giving effect to principles of conflicts of law. This Agreement constitutes the entire Agreement between the parties regarding the subject matter herein, and no amendments, changes or modifications may be made to this Agreement without the express written consent of each of the parties. If any term or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms and provisions of the Agreement shall remain in full force and effect, provided that the essential purpose of the Agreement is preserved. No failure or delay by a party in exercising any right hereunder or any partial exercise thereof shall operate as a waiver thereof or prohibit any other or further exercise of any right hereunder. This Agreement shall benefit and be binding upon the parties and their respective successors and assigns; provided, however, that Manager shall not have the right to assign this Agreement without the prior written consent of Receiver, which consent may be withheld in Receiver's sole discretion. This Agreement may be executed and delivered (including by facsimile, "pdf" or other electronic

transmission) in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.

The provisions of this Paragraph shall survive the expiration or earlier termination of this Agreement.

This Agreement is contingent upon the approval of the Court.

[Remainder of page intentionally left blank; Signature page to follow]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, as of the date first written above.

RECEIVER:

Robert J. Weiler, Sr., of The Robert Weiler Company, as Court Appointed Receiver for certain property known as Colonial Village Apartments pursuant to a Court Order entered in the Franklin County Court of Common Pleas (Case No. _____)

By: _____

Name: Robert J. Weiler, Sr.

Its: _____

Dated: _____, 20____

MANAGER:

Hayes Gibson Property Services, LLC,
a Delaware limited liability company

By: _____

Name: Alexandra S. Jackiw

Its: Chief Operating Officer

Dated: _____, 20____

EXHIBIT A

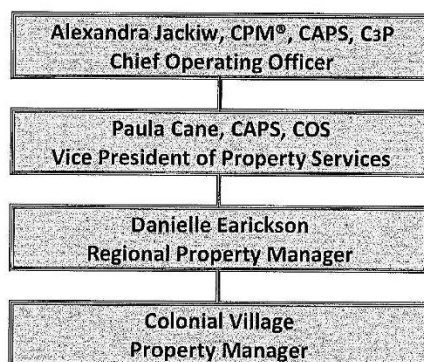
ADDITIONAL MANAGEMENT COMPENSATION

1. **Start Up Fee:** \$7,500.00 for initial set-up of software and accounting functions and completion of due diligence inspections.
2. **Leasing Bonus:** An amount equal to \$_____ per executed lease or renewal
3. **Capital Supervision Fee:**
 - Capital projects between \$25,000 and \$50,000 – Five Percent (5.0%) of total project cost
 - Capital projects between \$50,001 and \$75,000 – Four Percent (4.0%) of total project cost
 - Capital projects in excess of \$75,000 – Three Percent (3.0%) of total project cost
4. **Transition Fee:** An amount equal to one month's fee to transition the property management/accounting and provide a final management report upon termination of the management agreement

EXHIBIT B
ADDITIONAL SERVICES

1. Management Structure: On-Site and Off-Site

The on-site property manager will report directly to a HGPS Area Manager. The Area Manager will report to a Regional Property Manager who will, in turn, report directly to Paula Cane, Vice President of Property Services. The overall management structure is outlined below.



Proposed On-Site Staffing Schedule:

POSITION	HOURS WORKED/WEEK	HOURLY RATE	ANNUAL SALARY
Property Manager	40.0	\$28.00/hour	\$ 58,240
Assistant Property Manager	40.0	\$20.00/hour	\$ 41,600
Leasing Consultant (3)	120.0	\$17.00/hour	\$106,080
Maintenance Supervisor.	40.0	\$25.00/hour	\$ 52,000
Assistant Maintenance Sup.	40.0	\$20.00/hour	\$ 41,600
Maintenance Technician (2)	80.0	\$17.50/hour	\$ 72,800
Groundsperson/Porter	40.0	\$15.00/hour	\$ 31,200
TOTALS	400.00		\$403,520

22% surcharge for benefits, taxes, FUTA, SUTA, etc. = \$ 88,774

TOTAL project salary cost = \$492,294 (\$969/unit)

EXHIBIT C

EXHIBIT 3

EXCLUSIVE RIGHT TO SELL OR LEASE LISTING CONTRACT

Commercial — Multi-Family — Land



In consideration of the agreement of the Broker and Owner as set forth herein concerning:

Property Address: Colonial Village Apartments - 508 units located at 1256 Rand Avenue, Columbus, OH 43227 ("Property")

Parcel Number(s): See attached Exhibit A County: Franklin

Owner and Broker agree to the following:

Listing Period

1. Owner hereby grants to the Broker the exclusive right to **(X) sell () exchange () lease** the Property commencing List Date 7/7/21 through Expiration Date 1/7/22. Owner offers the property at a price of \$ _____ on the following terms: acceptable to Lender and the Court, as those terms are defined below

Brokerage Fee

2. A. Receiver hereby agrees to pay the Broker a fee of 5%* of the selling price of the Property, if the Property is 1) sold or exchanged by current Broker with another broker or 2) 4% of the selling price of the Property if the property is sold or exchanged by current Broker without another broker.
- B. Owner hereby agrees to pay the Broker a fee of N/A of the gross rent due during the lease term if the Property is 1) leased by current Broker alone or another broker or 2) a written offer to lease on the terms provided herein by current Broker alone or another broker is submitted to the Owner signed by a ready, willing and able Tenant.

In addition, Owner shall pay brokerage fee as follows: (these terms to be included in Lease):

- 1) A fee of N/A of the gross amount due during the lease term for extension of renewals, payable on extension of renewal.
- 2) A fee of N/A of the gross amount due during the lease term if Tenant leases additional space in building from Landlord or enters into subsequent lease of Premises.
- 3) A fee of N/A of the selling price of the Property if sold to Tenant during terms or within N/A days after term or renewal or extension, with credit given for the unearned portion of any lease commission already paid.

If the Receiver and a Buyer (tenant) sign a Purchase Agreement, but the closing of the sale of the Property will not take place until after the original term of this Listing Contract, then Receiver's Obligation to pay a fee, as stated in this Listing Contract, shall be extended to coincide with the closing date. This commission shall be payable in cash at closing or upon full lease execution.

- C. Above stated fees shall be paid if the Property is sold, exchanged or leased or a contract is entered into for the sale, exchange or lease, within 90 days (Protection Period) after the expiration of this Listing Contract (or any extension thereof) to any person or entity with whom the Broker has had negotiations prior to expiration, provided the Broker notifies Receiver of the names of such person (s) or entities, in writing, prior to Listing Contract (or any extension thereof) expiration.
- D. Receiver authorizes the Broker to compensate other Brokers as buyer-broker or tenant-broker from the fee paid (_____) Yes (_____) No

Initials

Initials

Marketable Title

3. Receiver agrees, in the event of a sale or exchange, to furnish satisfactory evidence of marketable title to the Property and convey the Property by transferrable and recordable fiduciary deed as appropriate.

Receiver's Cooperation

4. Receiver hereby authorizes Broker to place a marketing sign on said property and remove all other "For Sale" and/or "For Lease" signs. Further, Receiver authorizes Broker and all salespersons authorized by listing Broker to have access to the property at all reasonable times for the purpose of showing it.

Copyright

5. In the event Receiver provides agent any photos, floor plans or other copyrightable material related to the listed Property (collectively, the "Content"), Receiver and/or Lessor hereby grants to Agent's Broker an irrevocable, non-exclusive and fully sub-licensable right (through multiple tiers) to use, reproduce, modify, adapt, publish, create derivative works from, distribute, perform and display any such Content (in whole or in part) worldwide and/or to incorporate any such Content (in whole or in part) in other works in any form, media, or technology now known or later developed.

Advertising

6. Receiver authorizes and directs Brokerage to advertise the listing, to list the property in the MLS and/or the chosen Commercial Information Exchange (CIE) subject to the Rules and Regulations of the MLS and/or CIE, to provide timely notice of status changes of the listing to the MLS and/or CIE, and to provide sales information including selling price to the MLS and/or CIE upon sale of the property. Brokerage is further authorized to place information about the Real Estate in any other informational service medium to advertise and promote the sale of the Real Estate. Receiver gives consent to other Brokerages to include information regarding the Real Estate in their advertising according to State of Ohio regulations and the rules of the MLS and/or the chosen CIE through Internet web sites. The history of listings via the informational service medium currently in use is available to others. Neither the MLS, CIE nor the Brokerage has responsibility or liability for the dissemination of such information. Receiver and Broker warrant that this Listing Contract, to the best of each parties knowledge, to be correct and accurate.

Disclosure & Owner's Covenants

7. Receiver specifically acknowledges and understands that if, to the best of Receiver's knowledge, Receiver knows of facts, environmental or other, materially affecting the value and desirability of the property, whether said facts, environmental or other, are readily observable or not, then Receiver is under a duty to disclose said facts, environmental or other to the Buyer, Tenant, and Broker. If Receiver knows of said facts, Receiver shall set them forth by written document attached to this Listing Contract. Receiver has fully reviewed this Listing Contract and the document(s) attached, (if any) affecting the property, and Receiver warrants to the best of his/her knowledge the accuracy of said information.

Receiver's Acknowledgements

8. A. **It is illegal, pursuant to the Ohio Fair Housing Law, Division (H) of Section 4112.02 of the Revised Code, and the Federal Fair Housing Law, 42 U.S.C.A. 3601, as amended, to refuse to sell, transfer, assign, rent, lease, sublease, or finance housing accommodations; refuse to negotiate for the sale or rental of housing accommodations; or otherwise deny or make unavailable housing accommodations because of race, color, religion, sex, familial status, as defined in Section 4112.01 of the Revised Code, ancestry, military status as defined in that section, disability as defined in that section, or national origin or to so discriminate in advertising the sale or rental of housing, in the financing of housing, or in the provision of real estate brokerage services.**

It is also illegal, for profit, to induce or attempt to induce a person to sell or rent a dwelling by representations regarding the entry into the neighborhood of a person or persons belonging to one of the protected classes.

- B. Receiver acknowledges that there are no other listing contracts for lease or sale of the property.
- C. Receiver acknowledges receipt of Broker's written "Policy on Agency" and the State of Ohio "Agency Disclosure" form.

Binding Contract

9. This is a legal and binding contract on all parties hereto including their heirs, legal representative, successors, and assigns.
10. Further conditions: If there is a co-operating agent involved in the transaction, then the fee shall increase from 5% to 6% of the total sales price.

Signature(s)/Remarks

11. If Receiver is composed of more than one person, I/we represent that those not signing, if any, have authorized my/our signing on their behalf. Receipt of a copy of this contract is hereby acknowledged.

12. **MISCELLANEOUS**

This Contract is subject to the approval of the Court in Case No. _____ (the "Court"). EFM Transfer Agent, LLC is the Lender in the Court. This Contract is submitted in support of Lender's application to the Court to appoint a Receiver for the owner of the Property

Remarks _____

Signed this Date July 2021

Accepted

_____ Broker

By _____ Salesperson

RECEIVER

Signature _____
of

Receiver
Robert J. Weiler, Sr., Court Appointed Receiver for Apex Colonial OH LLC
by Order of the Court

Address _____

City _____ State _____ Zip _____

Telephone _____ Fax _____

Email _____

By its signature below, Lender indicates its approval of the above terms and that it will submit this Exclusive Right to Sell or Listing Contract to the Court for approval

LENDER
EFM TRANSFER AGENT

X

K Meagher

By: Katherine Meagher
Its: Authorized Signatory

Exhibit A

010-134519-00	1180 OLNEY DR
010-134533-00	3668 ALLENDALE DR
010-134534-00	3666 ALLENDALE DR
010-134535-00	1228-1230 BROOKWAY...
010-134518-00	1240 BROOKWAY RD
010-134517-00	1248 BROOKWAY RD
010-134516-00	1256 BROOKWAY RD
010-134515-00	1264 BROOKWAY RD
010-134514-00	1272 BROOKWAY RD
010-134513-00	1280 BROOKWAY RD
010-134512-00	1288 BROOKWAY RD
010-134511-00	1294 BROOKWAY RD
010-134510-00	1300 BROOKWAY RD
010-134532-00	1301 BROOKWAY RD
010-134531-00	1295 BROOKWAY RD
010-134530-00	1287 BROOKWAY RD
010-134529-00	1279 BROOKWAY RD
010-134528-00	1271 BROOKWAY RD
010-134527-00	1263 BROOKWAY RD
010-134526-00	1255 BROOKWAY RD
010-134525-00	1247 BROOKWAY RD
010-134524-00	1239 BROOKWAY RD
010-134536-00	1225-1227 BROOKWAY...
010-134523-00	3663 ALLENDALE DR
010-134522-00	3651 ALLENDALE DR
010-134521-00	3639 ALLENDALE DR
010-134520-00	1179 OLNEY DR
010-137574-00	3514-3562 RAND SQ
010-137573-00	3557-3560 RAND CR
010-137572-00	3533 RAND CT
010-137571-00	1171 RAND AV
010-137570-00	3600-3626 ALLENDAL...
010-137576-00	1256 RAND AV

EXHIBIT 3

**IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO**

EFM TRANSFER AGENT LLC,	:	
	:	
Plaintiff,	:	Case No. 21CV005425
	:	
v.	:	Judge Sheryl K. Munson
	:	
APEX COLONIAL OH LLC, et al.,	:	
	:	
Defendants.	:	
	:	

[PROPOSED] ORDER APPOINTING RECEIVER

This matter comes before the Court on the Joint Motion of Plaintiff EFM Transfer Agent, LLC (“EFM” or “Lender”) and the City of Columbus (the “City”) (collectively, “Movants”) for the Appointment of a Receiver (the “Joint Motion”). The Court has reviewed the Joint Motion, the pleadings in this case, and all the relevant filings and finds as follows.

A. The property at issue in this case (the “Premises”) is a 508 unit multi-family residential apartment complex, spanning thirty parcels and ninety-six buildings, located on the east side of Columbus and known as the Colonial Village Apartments. The Premises comprises Franklin County Permanent Parcel Nos. 010-134510, 010-134511, 010-134512, 010-134513, 010-134514, 010-134515, 010-134516, 010-134517, 010-134518, 10-134519, 010-134520, 010-134521, 010-134522, 010-134523, 010-134524, 010-134525, 010-134526, 010-134527, 010-134528, 010-134529, 010-134530, 010-010134531, 010-134532, 010-134533, 010-134534, 010-134535, 010-134536, 010-137570, 010-137571, 010-137572, 010-137573, 010-137574, 010-137576 and 010-137577.

B. On or about August 26, 2020, Defendant Apex Colonial OH LLC (“Apex Colonial”) executed a Promissory Note in the principal amount of \$15,500,000.00 (the “Promissory Note”) in favor of EF SBC 2015-2 LLC (“EF SBC”).

C. On or about August 26, 2020, in connection with the Promissory Note, Defendants Apex Colonial, Aron Puretz (“Puretz”), and Oron Zarum (“Zarum”) executed an Environmental Compliance and Indemnity Agreement (“Environmental Agreement”) in favor of EF SBC.

D. On or about August 28, 2020, in order to secure its obligations under the Promissory Note, Defendant Apex Colonial executed and delivered an Open-End Mortgage, Security Agreement and Fixture Filing, recorded on August 28, 2020, as Instrument Number 202008280128328 with the Franklin County, Ohio Recorder’s Office (the “Mortgage”), wherein Apex Colonial granted to EF SBC a mortgage lien against the Premises..

E. On or about August 28, 2020, in connection with the Promissory Note, Defendant Apex Colonial executed a Pledge and Security Agreement (“Pledge”) in favor of EF SBC.

F. On or about August 28, 2020, in order to further secure its obligations under the Promissory Note, Defendant Apex Colonial executed and delivered an Assignment of Leases and Rents, recorded on August 28, 2020, as Instrument Number 202008280128329 with the Franklin County, Ohio Recorder’s Office (the “Assignment of Rents”), wherein Apex Colonial granted to EF SBC the right, title, and interest in any and all present or future leases, tenancies, rents, profits, and other income or payments due or payable to Apex Colonial as the result of any use, possession, or occupancy of all or any portion of the Premises.

G. On or about August 26, 2020, Defendants Puretz and Zarum each executed a Guaranty of Payment and Performance in favor of EF SBC (the “Guaranty”) to further secure Defendant Apex Colonial’s obligations under the Promissory Note.

H. On or about September 23, 2020, EF SBC and EFM entered into an Assignment of Open-End Mortgage, Security Agreement and Fixture Filing and Related Loan Documents (the “Mortgage Assignment”) in which EF SBC assigned all of its right, title, and interest in the Promissory Note, Environmental Agreement, Mortgage, Pledge, Assignment of Rents, and Guaranty, among other documents (collectively, the “Loan Documents”), to EFM. The Mortgage Assignment was recorded on October 6, 2020, as Instrument Number 202010060152432 with the Franklin County, Ohio Recorder’s Office.

I. On April 14, 2021, the City sued Defendants Apex Colonial, Puretz, Zarum, Aloft MGT, LLC (“Aloft”) (Apex Colonial’s property management company), and others in *State ex rel. Klein v. Apex Colonial OH LLC, et al.*, Franklin Cty. Municipal Ct., Env’tl. Div. No. 2021 EVH 60155 (“*Klein*”), seeking, among other things, an order determining that the Premises violates housing and health code provisions and constitutes a public nuisance, the abatement of the code violations and public nuisance, and the appointment of a receiver over the Premises pursuant to R.C. 1901.131, 2735.01, and/or 3767.41(C)(3).

J. On August 3, 2021, the Franklin County Municipal Court, Environmental Division, issued a Stipulated Order for Permanent Injunctive Relief in *Klein*. The Environmental Court found, among other things, that the Premises constitutes a public nuisance and is subject to abatement. The Environmental Court found pursuant to R.C. 3767.02 that Apex Colonial, Puretz, Zarum, Aloft, and others are guilty of maintaining a public nuisance at the Premises “threatening the health, safety, and welfare of the people of the City of Columbus, persons at the Premises, and members of the Columbus, Ohio Division of Police and Division of Fire.” The Environmental Court further found that the Premises are not in compliance with Columbus City Code Title 47. The Environmental Court ordered Apex Colonial, Puretz, Zarum, Aloft, and other defendants in

Klein to abate the public nuisance at the Premises within thirty days of its Order by bringing the property into compliance with any and all applicable provisions of the Columbus City Code.

K. On August 12, 2021, EFM filed the current lawsuit against Apex Colonial, Puretz, and Zarum for Breach of the Loan Documents and Foreclosure of the Mortgage. EFM alleges that Apex Colonial, Puretz, and Zarum defaulted on their obligations under the Loan Documents by, among other things, failing to make monthly payments to EFM under the Promissory Note, failing to pay real estate taxes when due, failing to properly care for and keep the Premises in good condition and repair, failing to comply with all laws, ordinances, regulations, or governmental orders affecting the Premises, and allowing the attachment of various liens and encumbrances to the Premises without posting a bond or indemnification satisfactory to EFM. EFM further alleges that Apex Colonial consented in writing to the appointment of a receiver upon its default under the Mortgage.

L. The term “Collateral” means all equipment, fixtures and any other personal property used or usable in connection with the Premises which EFM has been granted a security interest by the Mortgage and any other loan document, including, but not limited to, all collateral and personal property described in the Mortgage and other loan documents, and all cash on hand, bank accounts, credit card receipts, bank deposits, security deposits, insurance refunds, utility deposits and other cash collateral. The Premises and Collateral together are referred to as the “Property.”

M. Movants propose a receivership to operate and manage the Property and prepare it for a sale free and clear of all liens and all rights of redemption.

N. The receiver proposed by Movants, Robert J. Weiler, Sr., is an experienced property manager and receiver and Ohio resident. Mr. Weiler has agreed to be compensated at \$400 per

hour. Mr. Weiler has affirmed that he does not have any personal or financial interest in the Property but does disclose that he is a principal of the proposed listing agent, The Robert Weiler Company. Mr. Weiler's extensive experience in commercial real estate and court receiverships are set forth in his resume attached as **Exhibit A**.

Having considered all the relevant filings, and or the reasons set forth in the Joint Motion, the Court finds that Apex Colonial consented in writing to the appointment of a receiver upon its default under the Mortgage. The Court finds that Apex Colonial, Puretz, and Zarum defaulted on their obligations under the Mortgage and other Loan Documents by failing to make monthly payments to EFM under the Promissory Note, failing to pay real estate taxes when due, failing to properly care for and keep the Premises in good condition and repair, failing to comply with all laws, ordinances, regulations, or governmental orders affecting the Premises, and allowing the attachment of various liens and encumbrances to the Premises without posting a bond or indemnification satisfactory to EFM. The Court also finds that the Premises is in danger of being lost, materially injured, diminished in value, or squandered if a receiver is not appointed.

Accordingly, the Court finds the Joint Motion to be well-taken. Pursuant to R.C. 2735.01, *et seq.*, this Court's Local Rules, and the terms and conditions of the Mortgage and other Loan Documents, the Court therefore orders as follows.

1. Appointment of Receiver and the Receivership Property.

a. Robert J. Weiler, Sr., whose business address is 10 North High Street, Suite 401, Columbus, Ohio 43215, is appointed Receiver of the Receivership Property (as defined below), effective upon entry of this Order and the delivery by the Receiver and acceptance by the Court of the surety bond as defined in Section 6.i below (the "Effective Date"). The Receiver's duty to act as Receiver is subject to the terms of this Order.

b. As of the Effective Date, the Receiver is authorized to direct and take immediate possession and full control of the Receivership Property and to take such other actions as the Receiver deems reasonable and appropriate to take possession, to exercise full control over, to prevent waste, and to preserve, manage, secure and safeguard the Receivership Property. None of the Defendants in this action shall have either possession or control of, or any right to Income (as defined below) derived from the Receivership Property.

c. The Receiver shall take possession of and receive from all depositories, banks, brokerages and otherwise (collectively the “Financial Institutions”), any money on deposit in all such Financial Institutions belonging to or arising from the operation of the Receivership Property, whether such funds be in accounts titled in the name of Apex Colonial or not (but excluding any monies paid to or held by EFM) and shall have the power and authority to issue demands for the freezing and turnover of funds upon any financial institution which the Receiver has determined is a depository of funds belonging to, or arising from, the Property, whether such accounts be titled in the name of Apex Colonial or not. All Financial Institutions are directed to deliver such deposits to the Receiver and such records as the Receiver may reasonably request with respect to such accounts. The Receiver may indemnify the Financial Institution upon whom such demand is made, and is empowered to open or close any such accounts. The Receiver shall deposit monies and funds collected and received in connection with the Receivership Property at a federal funded banking institution or savings association with offices in the State of Ohio, which are not parties to this case. At the Receiver’s sole and absolute discretion, the Receiver is permitted to open such bank account(s) in the name of Apex Colonial utilizing Apex Colonial’s taxpayer identification number, or the Receiver may establish a new taxpayer identification number for the receivership estate to be used, *inter alia*, for banking purposes.

d. Apex Colonial and Aloft, and all of their respective employees, are ordered to cooperate with EFM in the transition of the management of the Receivership Property to the Receiver, including, from time to time, endorsing checks related to the Property and delivering the same to the Receiver, and, in the event of an Approved sale of the Property or a portion thereof, cooperate with Receiver in effectuating such sale, including executing any customary closing documents reasonably required by an escrow agent or title company, and on the Effective Date shall turn over to the Receiver all of the following pertaining to the Receivership Property within five (5) days after the entry of this Order (time being of the essence):

- i. All keys, including master alarm codes, access devices, and access codes affording entry upon or access to the Property, and a list of persons who to Apex Colonial's knowledge possess any of the foregoing which are not turned over to the Receiver;
- ii. Any tenant ledgers/leases, including all amendments and renewals, pending or otherwise, together with communication/correspondence files and lease abstracts/summaries (if any), and Tenant contact names and telephone numbers;
- iii. All deposit accounts, including the petty cash fund, if any, into which deposits have been made and are currently being held, whether in the name of Apex Colonial or in any other name for the benefit of the Apex Colonial, and account statements for the month of the Effective Date and all preceding months from the date the Promissory Note was executed;
- iv. All security deposits, security deposit accounts, if any, and an accounting of all security deposits;
- v. A list of all tenants currently receiving rental assistance in the form of Housing Choice Vouchers from the Columbus Housing Authority or other agencies.

- vi. A current aged account receivables or delinquency report and detailed rent roll;
- vii. An aged listing of all trade payables and other payables;
- viii. A copy of any records relating to operating expenses for the Property;
- ix. A list of utilities, copies of utility bills, and all utility account numbers;
- x. Year-end 2020 operating statement as well as a year-to-date 2021 operating statement and budgets for each of these years;
- xi. All payroll records and employee files and applications pertaining to on-site employees of the Property;
- xii. An inventory of all equipment, furniture, vehicles and related titles, and supplies for the Property;
- xiii. All existing service contracts, and a list of, and any and all documents pertaining to, any unpaid vendor or service provider invoices or record of work performed by any such vendors, including but not limited to copies of any and all mechanics' liens relating to the Property;
- xiv. All pending bids for contractor work, if any;
- xv. Insurance policies on the Property or Premises and their terms;
- xvi. All tenant and vendor insurance certificates and loss runs and claims submitted in the past three (3) years, if any;
- xvii. Site plans, surveys, specifications, floor plans, drawings, measurements, etc., easements, access agreements, parking agreements, maintenance agreements, and other documents concerning access, use, or maintenance of the Property;
- xviii. Documents identifying or summarizing all pending litigation (excluding this action and *Klein*), pending administrative hearings, insurance claims, and tax appeals, as

well as any documents pertaining to any violations of any applicable building or health and life safety codes and regulations;

- xix. All records required to be kept under applicable safety and environmental laws, and documents and information pertaining to any violations of any applicable building or health and life safety codes and regulations, including any documents, information, and notices specific to the Property relating to COVID-19;
- xx. All documents, books, records and computer files, computer equipment, software, management files, equipment, furniture, supplies used at and associated with the Property and all passwords needed to access such software and computer files. Email records maintained for the Property (and all off-site financial records of Apex Colonial and Aloft related to the Property) including, but not limited to, all records of Apex Colonial and Aloft concerning the Income, and the operation and management of the Property;
- xxi. Current completed and executed W-9 forms for Apex Colonial showing Receiver's address of 10 North High Street, Suite 401, Columbus, Ohio 43215.
- xxii. A list of historical common area maintenance charges and operating expenses for the Property and the specific calculations currently used and used for the last three (3) years for common area maintenance charges for the Property, the 2021 budget for the Property and the 2020 common area maintenance calculations for the Property;
- xxiii. All building plans, technical manuals for all systems, machinery or equipment on or a part of the Property together with operating procedures and current warranties in existence with respect to the Property;

- xxiv. The names, addresses, telephone numbers and e-mail addresses for the key representatives of Apex Colonial, its property manager(s), managers, members, agents (including, but not limited to, all management companies engaged by Apex Colonial), and all of its respective employees in possession or control of any portion of the Property;
 - xxv. Information and passwords for all website and email hosting, domain name registration, social media, digital advertising, and other internet accounts related to the Receivership Property; and
 - xxvi. Such other records pertaining to the management of the Receivership Property as may be reasonably requested by the Receiver.
- e. Apex Colonial shall prepare and submit to EFM and the Receiver an accounting for all Income received since June 29, 2021, the date EFM sent its default notice to Apex Colonial. This accounting shall be delivered to EFM and the Receiver no later than 30 days after the Effective Date.
- f. Apex Colonial, Aloft, and their property managers, employees, and agents are prohibited from removing any of their personal property from the Property or diverting any Income.
- g. Apex Colonial shall fully cooperate with Receiver in adding the Receiver, Management Agent and EFM as additional insureds and EFM as the loss payee on all insurance relating to the operation and management of the Receivership Property and required pursuant to the Loan Documents. Apex Colonial will cooperate with the Receiver in procuring all insurance coverage determined by the Receiver to be required at the Property prior to the expiration of the current insurance coverage.

2. Receiver's Duties and Authority.

a. The Receiver shall be vested with and shall discharge the following authority, powers and duties:

- i. To maintain, secure, manage, operate, repair, and preserve the Receivership Property;
- ii. To change any and all locks to the Receivership Property and, if appropriate, limit access to some or all of the Receivership Property;
- iii. To assume control over the Receivership Property and to collect and receive all Income;
- iv. To prepare and maintain complete books, records, and financial reports of the Receivership Property, including, but not limited to, operating statements, income statements, balance sheets and all other statements prepared for the Receivership Property in a form acceptable to EFM;
- v. To allow EFM, its counsel and appraisers or other independent third-party consultants engaged by EFM or its counsel access to the Receivership Property at all reasonable times to inspect the Receivership Property and all books and records, and to cooperate with EFM, its counsel, appraisers, and other independent third-party consultants to evaluate the Property;
- vi. To retain, hire, or discharge on-site employees (none of whom are or shall be deemed to be employees of EFM) and without any liability to the Receiver;
- vii. To establish pay rates for any on-site employees;
- viii. To review existing workers' compensation, disability, general liability, and "all risk" hazard insurance to retain, modify, cancel, or purchase such insurance,

and name EFM and the Receiver as additional insureds, as the Receiver deems appropriate for the Receivership Property's preservation and protection, but subject to Approval;

- ix. To maintain a separate account with a federally insured banking institution or a savings association with offices in the State of Ohio in the Receiver's own name as Receiver or in Apex Colonial's name, from which the Receiver shall disburse all authorized payments as provided in this Order. The taxpayer identification number associated with the account referenced in this subsection may, at the Receiver's discretion, be the taxpayer identification number for the receivership estate;
- x. To receive and endorse checks pertaining to the Receivership Property either in the Receiver's name or in Apex Colonial's name;
- xi. To pay all appropriate real estate taxes, personal property taxes, any other taxes or assessments against the Receivership Property;
- xii. To prepare and file any tax returns stemming from the Receivership Property and the operation of the Receivership Property as may be required by law. The Receiver shall not be responsible for the preparation and filing of any tax returns for Apex Colonial (including income, commercial activity, gross receipts, or other non-operational tax returns). The Receiver shall only be responsible for providing Apex Colonial with information in the Receiver's possession that may be necessary for Apex Colonial to prepare and file its tax returns, including providing financial statements on a cash basis, within 60 days of year end. Apex Colonial shall be responsible for payment of such taxes and any of its costs to

- prepare and file such tax returns. Apex Colonial shall provide to the Receiver any information needed to file any tax returns for the Receivership Property;
- xiii. To operate the Receivership Property under any existing name or trade name (or new name, if the Receiver deems appropriate to do so), or any derivation, combination, or variation thereof, associated with the Property or Apex Colonial, and any other tradenames, trademarks, logos, or copyrights associated with Apex Colonial or the Property or owned by Apex Colonial.
 - xiv. To determine and report to the Court and EFM whether any Income previously received by Apex Colonial has been used for purposes not permitted by the Mortgage and other Loan Documents;
 - xv. To open and review mail directed to Apex Colonial and its representatives pertaining to the Receivership Property;
 - xvi. To seek assistance of law enforcement officials as necessary to preserve the peace and protect the Receivership Property;
 - xvii. The Receiver is authorized to continue, manage, operate, and lease the Receivership Property and, for a period beginning immediately upon entry of this Order and for 12 months following that date (the "Marketing Period"), list, market, or engage a reputable brokerage company to market the Property for sale and, subject to the approval of EFM and the Court, proceed with a sale of the Property (or any portion thereof) free and clear of all liens and all rights of redemption. If a purchase and sale agreement for the Property has not been executed by the end of the Marketing Period, EFM (or EFM's assignee, as applicable), in its sole discretion, will either take title to the Property via a deed-

in-lieu agreement (the “Deed-In-Lieu Option”), or commence the process of selling the Property through a sheriff’s sale pursuant to R.C. Chapter 2329 (the “Sheriff’s Sale Option”). EFM (or its assignee) may at any time and in its sole discretion, elect to exercise its Deed-In-Lieu Option or its Sheriff’s Sale Option prior to the expiration or after the expiration of the Marketing Period. Apex Colonial agrees to cooperate with EFM to execute such documents as may be necessary, in the sole discretion of EFM (or EFM’s assignee, as applicable), to complete any transfer of the Property consistent with this sub-paragraph. The Marketing Period may be extended by an agreement in writing between EFM and the Receiver. If EFM doesn’t elect to exercise its Deed-in-Lieu Option or its Sheriff’s Sale Option, the Receiver will continue his sale efforts until such time as EFM elects. The Receiver will continue to maintain and control the Receivership Property until such time as a transfer occurs in accordance with a Deed-in-Lieu or Sheriff’s Sale.

- xviii. The Receiver is authorized to make payments and disbursements, in the ordinary course of business, as may be needed for the preservation of the Property;
- xix. The Receiver is authorized to maintain appropriate insurance, continue any current policies in place, cancel such policies, and purchase further insurance as the Receiver deems appropriate, subject to Approval as defined below. If necessary, the Receiver may enter into a commercially reasonable payment plan for insurance premiums or may enter into an insurance premium financing agreement with prior approval of EFM;

- xx. The Receiver is authorized to: 1) enter into leases and do all things necessary to continue the operations and business of the Property; 2) enforce, amend, modify, or terminate existing contracts, including listing agreements, affecting the Property; 3) pay all utilities, expenses, and other obligations to suppliers and servicers in the ordinary course of business, including, with Approval, obligations incurred prior to the commencement of the receivership so long as the Receiver has determined that it is prudent to do so in order to maintain the business relationships that are beneficial to the conduct of the receivership; 4) make repairs and improvements as necessary for the maintenance of the Property or to comply with the Stipulated Order for Permanent Injunctive Relief entered in *State ex rel. Klein v. Apex Colonial OH, LLC, et al.*, Franklin Cty. Municipal Ct., Env'tl. Div. No. 2021 EVH 60155, provided, however, that the Receiver shall not make any improvements, repairs, and/or remediation having a cost of \$5,000 or more without first obtaining Approval unless included within the Approved Budget; and 5) take all steps necessary to comply with all requirements, regulations, and laws applicable to the Property, and to deal with all regulatory authorities in connection with the same;
- xxi. The Receiver is authorized to, in its discretion, institute, prosecute, defend, compromise, and/or intervene in or become a party to such actions or proceedings in state or federal courts which may in the Receiver's opinion be necessary for the protection, maintenance, and preservation of the Property, for the carrying out of the terms of any order of the Court affecting the Property, to collect rents and other amounts now or hereafter becoming due, to remove tenants, guests, or other

persons or entities from the Property, and/or to defend against any action brought against the Receiver acting in such capacity. The Receiver may hire an attorney/law firm to prosecute eviction actions, if necessary, without approval of the Court but with the prior approval of EFM on terms and conditions reasonable for the Columbus, Ohio Market and the complexity associated with the matter;

xxii. Upon appointment, the Receiver may retain counsel or professionals pursuant to Local Rule 66.08. The Court hereby approves Receiver retaining:

- Hayes Gibson Property Services, LLC (“Hayes Gibson”) as the Receiver’s property manager. The Property Management Agreement between the Receiver and Hayes Gibson is attached as **Exhibit B**, as well as company and biographical materials demonstrating the extensive experience Hayes Gibson possesses in managing severely distressed assets in court receiverships. Hayes Gibson is a disinterested third-party to this matter with no business relationship with the Receiver.
- The Robert Weiler Company as listing agent for the sale of the Premises. The Listing Agreement between the Receiver and The Robert Weiler Company (the “Listing Agreement”) is attached as **Exhibit C**.
- The law firm Allen Stovall Neuman & Ashton LLP— attorney James A. Coutinho in particular—as legal counsel to represent him and the receivership estate in this matter. Mr. Coutinho and the other attorneys at the firm have significant experience in receivership cases involving real estate and can address all legal needs of the Receiver. Aside from

his experience in representing receivers generally in this Court, Mr. Coutinho is also counsel in numerous real property receiverships involving nuisance matters that have arisen before the Environmental Court, and he is familiar with the prosecutor team with the City of Columbus that is assigned to this property. His familiarity with the receivership process and with nuisance issues will be an asset in this case.

As to compensation, counsel for the Receiver has proposed that their fees be charged at a discounted rate that is used when they represent court fiduciaries. That discounted rate is a \$30 per hour reduction in each attorney's standard hourly rates. Those rates are set forth in the table below. This proposed compensation is reasonable given the level of experience required to handle these matters and the ongoing cost of legal services for this locality.

Attorney	Standard Hourly Rate	Discounted Fiduciary Rate
Richard K. Stovall, Partner	\$425.00	\$395.00
James A. Coutinho, Partner	\$350.00	\$320.00
Tom Shafirstein, Associate	\$285.00	\$255.00
Bradley Hemmer, Associate	\$225.00	\$195.00
Michele Doan, Paralegal	\$150.00	\$120.00

xxiii. In the event of a pending sale of the Receivership Property, EFM and/or Receiver shall provide City the following information no less than thirty (60) days before the Receivership Property is set to transfer to the perspective buyer:

- a. Name of the person(s) or entity;
- b. Address;

- c. Statutory agent and Agent's address (if applicable); and Copy of the proposed sale agreement.
 - d. To the extent necessary, EFM and/or Receiver shall cooperate with any meetings between the City and/or prospective buyer.
- xxiv. Notwithstanding the foregoing, the Receiver and the receivership estate shall not be liable for the payment of taxes of any kind, assessments, goods or services provided to Apex Colonial or the Property or utility charges prior to the date of this Order. Any individual or entity receiving a copy of this Order is hereby enjoined and restrained from discontinuing service to the Receiver or the Receivership Property based upon the non-payment of such taxes, assessments, goods or services, or utilities prior to the date of this Order and from attempting to collect taxes, assessments, invoices and utility charges from the Receiver pre-dating the date of this Order. Each utility company or entity providing service to the Premises shall forthwith transfer any deposits which it holds to the exclusive control of the Receiver and shall be prohibited from demanding that Receiver deposit additional funds in advance to maintain or secure such service.
- xxv. Remediation of City Code Violations
- a. Upon appointment of the Receiver and commencement of the maintenance, management, operation, and preservation of the Receivership Property, Receiver shall, as part of their maintenance of the Receivership Property:
 - 1. Clear solid waste, trash, and debris; ensure deposit of waste, trash and debris into dumpsters at the property; maintain all dumpsters in

- working condition; and perform regular maintenance to remove solid waste, trash, and debris from the Receivership Property;
2. Perform regular maintenance to remove high grass and weeds throughout the Receivership Property;
 3. Install a qualified maintenance staff of at least five (5) members, which shall work a minimum of forty (40) hours per week, with at least one (1) staff member being available to residents on the weekends and after-hours. Residents shall be notified of contact information for maintenance staff.
 4. Ensure that at least one property manager is present at the Receivership Property and available to address tenant concerns a minimum of five (5) days per week. Said property manager shall be available a minimum of forty (40) hours per week. Residents shall be notified of contact information for property management staff;
 5. Establish a process for response to new maintenance requests in writing, including for responding to emergency maintenance requests;
 6. Establish prohibited areas for parking of inoperable vehicles so as to not block safe access to dumpsters;
 7. Establish a process for the removal of all inoperable vehicles;
 8. As soon as reasonably practicable, cause for the identification and trespass or commencement of eviction proceedings of all known persons contributing to nuisance conditions at the Receivership

Property, to include persons engaging in criminal activity and persons who invite, house, or provide a haven for persons engaging in criminal activity at or on the Receivership Property; and

9. Provide updates as to progress and work at the property to the City and the Franklin County Environmental Court pursuant to any scheduled court dates in *Klein*.

b. Within thirty (30) days of this Order, Receiver shall:

1. Remedy all known emergency violations at the Receivership Property; and
2. Lock and board all known vacant units in accordance with applicable code requirement.

c. Within sixty (60) days of this Order, Receiver shall:

1. Remedy the following outstanding City code occupied interior violations:
 - a. Standing water in unit or water/sewage backups;
 - b. Unsecure toilets;
 - c. Bug or rodent infestations;
 - d. Broken windows;
 - e. Broken locks.
2. This requirement shall only apply to known outstanding violations issued by the City in currently occupied units.

d. Within sixty (60) days of this Order, Receiver shall:

1. Complete an inspection and audit of all units and the exterior of the Receivership Property with the purpose of assessing the condition of every unit of the Receivership Property; identifying any unknown emergency or life/safety issues; prioritizing maintenance to be performed to bring the Receivership Property into compliance with City Code; and generally assessing the work needed to maintain, secure, manage, operate, repair, and preserve the Receivership Property;
2. Provide a timeline to the City for remediation of outstanding code violations, prioritizing the boarding to code of vacant units and interior violations of occupied units.

xxvi. Security

- a. Without further order of the Court, the Receiver may enter into an agreement with private security officers that are within the budget amounts established by this Order so long as the agreement is on commercial reasonable terms. Within thirty (30) days of this Order, Receiver shall employ no less than six (6) private security officers. The private security officers must cover a minimum of sixteen (16) hour shift for seven (7) days per week at the Premises.
- b. Any private security company or officer retained by Receiver to perform security services at the Premises shall be registered or licensed according to the laws of the State of Ohio.

- c. Receiver shall maintain, install, and/or return to working condition, full HD 1080p Indoor/Outdoor Dome Cameras, or cameras of a comparable equivalent, to monitor all facets of the exterior of the Premises. The camera system shall be maintained at all times with the following stipulations:
 - i. All cameras shall be operational and recording footage during all hours of operation;
 - ii. Monitors displaying the real-time footage captured by all exterior cameras shall be situated in such a manner as to be easily viewed by law enforcement at all times;
 - iii. Footage captured by all exterior cameras shall be recorded, stored, and held for no less than thirty (30) days; and
 - iv. Footage captured by all exterior cameras shall be made available to law enforcement upon request.
 - d. Within sixty (60) days of this Order, Receiver shall install and maintain full and sufficient outdoor lighting upon the exterior of the Premises so as to illuminate all sides of the Premises; it shall be maintained to ensure all lights are in working order.
- xxvii. The Receiver, EFM, and the City may agree in writing to any alteration or extension of the deadlines in subsections 2.a.xxiii, 2.a.xxv, or 2.a.xxvi above without further order of the Court.
- xxviii. The provisions of this Order relating to repairs and security are personal to the City and not intended to create any reliance, rights, or expectations by possible third-party beneficiaries.

3. Receiver's Authority Subject to Approval.

a. In carrying out the duties contained in this Order, then, subject to Approval, the Receiver is authorized, but not required to:

- i. Engage contractors and skilled workers, taking due care to obtain competitive pricing, to complete improvements to the Premises and/or maintain the Premises and to execute such contracts for such purposes as the Receiver deems appropriate, provided, however, if the aggregate amount of any work under such a contract will exceed \$5,000 Receiver shall obtain Approval, but without Approval for a life-threatening or other health or safety emergency;
- ii. Enforce, amend, or terminate any existing contracts affecting the Property;
- iii. Reject, without liability, any unexpired contracts entered into by Apex Colonial that are burdensome on the Receivership Property;
- iv. Execute, cancel, modify, renegotiate, or abrogate all service, maintenance, or other contracts relating to the operations of the Receivership Property, but subject to Approval for contracts where the anticipated monthly expense will be in excess of \$5,000; provided however, such limitation shall not apply to utility service agreements and uniformed security services for the receivership property. All such contracts are to be terminated upon a sale or disposition of the Receivership Property or termination of the Receivership, or, if such contracts are assigned to the new owner as a part of the disposition of the Receivership Property, all liability of the Receiver or receivership estate thereunder will terminate upon the assignment;

- v. Employ attorneys, accountants, agents, and other professionals as the Receiver may from time to time deem appropriate on such terms and conditions as the Receiver deems appropriate;
- vi. Borrow funds for purposes relating to the operations of the Receivership Property. Receiver shall not borrow funds without first providing EFM, by advance written notice, a reasonable opportunity to elect to advance funds required by the Receiver;
- vii. Contest, protest, or appeal any ad valorem tax or assessment, real estate tax, personal property tax, or other tax or assessment pertaining to the Receivership Property. Any refund or reimbursement of taxes whether paid by the Receiver or Apex Colonial shall be deemed Income to be applied as provided below; and,
- viii. Defend actions against Apex Colonial or prosecute actions related to the Property and incur expenses to defend and prosecute such actions to the extent that the Receiver believes, in its sole discretion, that defending or prosecuting such actions will protect and preserve the Receivership Property; and
- ix. List for sale the Property and enter into a definitive agreement for the sale of the Property under the Listing Agreement.

4. Extent of Receiver's Authority.

a. Although the Receiver shall have possession and control of the Receivership Property, the Receiver shall not take title to the Receivership Property. Title to the Premises shall remain in the name of Apex Colonial or its assigns, unless foreclosed upon by the EFM or otherwise transferred in accordance with the direction of EFM and the Court, in which case title

to the Premises will remain in the name of Apex Colonial until the delivery of the Sheriff's Deed or other deed to EFM or a purchaser.

b. Without limiting or expanding the foregoing, the Receiver is authorized to exercise all powers generally available and shall be subject to all the duties of a Receiver under the laws of the State of Ohio and this Court's Local Rules that may be incidental to the management of the Receivership Property, as described in this Order. The Receiver shall have any additional powers that are provided by law and that the Court may from time to time direct or confirm.

c. The Receiver shall not take any action that impedes or interferes with the foreclosure or foreclosure sale process in carrying out the duties contained in this Order.

d. The Receiver shall, during the pendency of this action, have the right to apply to this Court for further instructions or directions.

e. The authority granted to the Receiver is self-executing, unless the action requires Approval. The Receiver is authorized to act on behalf of, and in Apex Colonial's name (or the Receiver's name) and utilize Apex Colonial's taxpayer identification number, as the Receiver deems appropriate without further order of this Court and without personal recourse against the Receiver (subject to the general provisions below).

f. All advances to the Receiver by the EFM for the benefit of the Receivership Property, including any advances for working capital or improvements and any other costs and expenses incurred by the Receiver under this Order shall be deemed protective advances under the Mortgage. Any such protective advance shall be fully secured by EFM's first priority mortgage lien and security interest against the Property. Any and all funds advanced by EFM to the Receiver pursuant to this Order shall: (a) be deemed made pursuant to contract; (b) be added to the amount of the indebtedness owed by Apex Colonial to EFM; (c) be deemed secured by the liens and

security interests in favor of EFM under the Loan Documents on the Receivership Property to the same extent and with the same priority as other indebtedness secured by all existing liens and security interests under the Loan Documents in favor of EFM, and (d) accrue interest at the interest rate provided under the loan documents in favor of EFM. All such funds advanced, including interest on advances, shall be deemed a prior lien before the repayment of any and all other claims against the Property (except for taxes and assessments having first priority as a matter of law) or proceeds of either of them.

g. The Receiver is hereby given the power and authority usually held by Receivers and reasonably necessary to accomplish the purposes of this Receivership including, without limitation, the specific power to take possession of all licenses, permits, or other government issued documents necessary for the continued operation of the Property, and to list, market, and to enter into a definitive agreement for the sale of the Property free and clear of all liens and all rights of redemption subject to EFM's prior Approval and further order of this Court.

5. Receivership Property and Income.

a. "Receivership Property" means and includes all of Apex Colonial's rights, title, and interest in the following to the extent EFM has been granted a security interest therein pursuant to the Loan Documents:

- i. The Premises;
- ii. All tangible and intangible property situated and used in connection with the operations of the Premises including, without limitation, the Collateral;
- iii. All Income;
- iv. All fixtures, trade fixtures or tenant improvements of every kind or nature located in or upon or attached to or used or intended to be used in connection

with the operation of the Premises and any buildings, structures or improvements located on the Premises (to the full extent of Apex Colonial's interest in same);

- v. All permits, licenses and other contracts and other intangible property pertaining to the Premises or the operations of the Premises;
- vi. All trade names and trademarks owned or used by Apex Colonial in connection with the Property;
- vii. All books, records, accounts, or documents of Apex Colonial and Aloft which in any way relate to the Property and Income; and
- viii. All other property, estate, right, title, and interest as described in and secured by the Mortgage, Assignment of Rents, Promissory Note and other Loan Documents.

b. The term "Income" means, collectively, all cash, cash on hand, checks, cash equivalence, credit card receipts, demand deposit accounts, bank accounts, cash management or other financial accounts, bank or other deposits and all other cash collateral (whether now existing or later arising); current and past due earnings, revenues, rents, issues and profits, accounts or accounts receivable (whether unpaid, accrued or to become due); all claims to rent, issues, profits, income, cash collateral and all other gross income derived with respect to the Property or business operations of the Property regardless of whether earned before or after entry of this Order. "Income" includes all Income received after June 29, 2021, the date EFM provided notice of default to Apex Colonial, that was not either (a) paid to EFM or (b) used for ordinary and necessary business expense regardless of whether the Income was received on or after the filing of the Complaint.

- c. Income shall be applied as follows (but subject to lien rights granted to EFM):
 - i. To the Receiver's approved fees and expenses;
 - ii. Management fees;
 - iii. To the current post-Receivership operating expenses, including any on-site employee payroll expenses, any real estate taxes and any other taxes stemming from the operations of the Property and use in normal business operations incurred during the Receivership to the extent set forth in the Approved Budget. The Receiver shall not make disbursements other than permitted under the Approved Budget except for:
 - (1) Life-threatening or other health or safety issues;
 - (2) Variations on individual line items not exceeding 10% so long as expenses in the aggregate are within 5% of the Approved Budget on a monthly basis; or
 - (3) Upon EFM's Approval.
 - iv. To the loan balance due EFM until paid in full;
 - v. Any surplus to be held pending further order of the Court.
- d. The Receiver shall be authorized to make interim distributions of Income to EFM after payment of current operating expenses, if the Receiver's "cash on hand" exceeds two months of budgeted expenses, unless otherwise agreed in writing by EFM.

6. Receiver's Compensation, Reports, and Accounting.

- a. The Receiver's compensation and approved expenses are set forth in **Exhibit D**.

b. The Receiver's compensation and other expenses shall be paid: (1) first from the Income from the Receivership Property and (2) next by EFM, but only to the extent that the Income is insufficient to pay the Receiver's compensation.

c. Nothing in this Order shall require the Receiver to advance funds other than from Income without a bond or security for payment satisfactory to Receiver.

d. Within thirty (30) days after obtaining possession of the Receivership Property, the Receiver shall submit to the Court, a list of all the personal property, whether tangible or intangible of which it has taken possession.

e. By the twentieth (20th) day of each calendar quarter, the Receiver shall prepare a financial report (including, without limitation, an income and expense statement, balance sheet and a cash flow analysis) on a quarterly basis pertaining to the operations of the Receivership Property during the immediately preceding quarter. The Receiver's financial report will contain a fee application subject to the Court's approval that includes the information required by Local Rule 66.11. The Receiver shall pay the property manager and any other individuals or entities hired to complete work in connection with the receivership estate on a monthly basis.

The Receiver shall further prepare a proposed operating budget and capital budget for the remainder of 2021 for the Receivership Property (the "Budget") within forty-five (45) days after the Effective Date and thereafter each December 1st for the proposed operating budget of the following year (collectively, the "Receiver's Reports").

f. The Budget will be reviewed by EFM and be subject to EFM's Approval. The Budget as approved shall be the "Approved Budget." Prior to the approval of EFM of the Approved Budget, all expenditures by the Receiver that are tied to the budget under this order shall be approved by EFM.

g. The Receiver shall file with the Clerk of Court such interim reports as may be required by the Court after due notice and opportunity for hearing.

h. The Receiver shall furnish to the parties' counsel any additional information regarding the Receivership Property as required by law and as may be reasonably requested by them, but the Receiver is authorized to request instructions from this Court if any party requests information on documents which are unduly burdensome or expensive to produce, or to annoy or harass or for any other improper purpose.

i. The Receiver shall post a surety bond in the amount of \$500.00 from an insurance company licensed to do business in the State of Ohio, to be determined by the Court pursuant to Local Rule 66.02(D).

7. Confidentiality.

a. “Confidential Information” means Apex Colonial’s Confidential Information and the Receiver’s Reports and any other non-public information.

b. The parties to this action, their counsel and all those in active concert or participation with them, who receive actual notice of this Order, or otherwise, shall keep all Confidential Information provided by the Receiver confidential, and all such persons are prohibited from disclosing any confidential information to anyone other than the parties to this action and their counsel without specific order of this Court, except that EFM and its attorneys and agents may provide potential purchasers, consultants, or other appropriate persons with information useful for the marketing, leasing, selling, or management of the Receivership Property.

8. Approval.

Whenever this Order uses the term “subject to Approval” or “Approval,” the

Approval shall not be deemed given except either: (1) by EFM's written consent either directly by EFM or by its counsel, or (2) by a specific order of approval from this Court. Any Court approval necessary for the disposition of property other than in the ordinary course of business will be obtained according to the process outlined in Local Rule 66.10.

9. Term and Final Accounting.

a. This Receivership shall continue until further order of the Court, subject to Section 2.a.xvii above.

b. The Receiver can be removed either: (1) automatically thirty (30) days after the filing of a written demand for removal signed by EFM's counsel and filed with the Court; or (2) in the Court's equitable discretion upon a motion for cause. If the Receiver is removed, a successor receiver can be appointed by a stipulated order on behalf of EFM subject to the approval of the Court.

c. Immediately upon discharge of the Receivership by this Court, the Receiver shall turn over to EFM or its designee (including any property manager), all of the Receivership Property remaining in the estate of the Receivership unless otherwise ordered by the Court.

d. Neither the termination of the Receivership nor the Receiver's removal will discharge the Receiver or the Receiver's bond unless and until the Receiver is discharged by this Court.

e. The Receiver shall submit a final accounting to Court (with copies to the recipients of the Receiver's Reports as identified above) simultaneously with the Receiver's final fee application. The Receiver's final accounting will meet the requirements of Local Rule 66.12.

f. Upon the Court approving the Receiver's final accounting, the Receiver shall be deemed discharged by the Court and the Receiver's bond cancelled.

10. General Provisions.

a. No person or entity shall file suit against the Receiver, or take other action against the Receiver, without an order of this Court permitting a suit or action provided, however, that no prior Court order is required to file a motion in this action to enforce the provisions of this Order or any other order of this Court in this action.

b. The Receiver and its property manager, and the employees, officers, agents and attorneys of each thereof, shall have no personal liability in connection with any liabilities, obligations, liens, or amounts owed to any of Apex Colonial's creditors because of the execution of the Receiver's duties under this Order. Nothing in this Order shall grant any rights to trade creditors or general unsecured creditors, whose rights shall be solely determined in accordance with Ohio law.

c. The Receiver and its property manager, and the employees, agents, officers and attorneys of each thereof, shall have no personal liability and they shall have no claim asserted against them relating to the Receiver's duties under this Order, except for claims due to their gross negligence, gross or willful misconduct, malicious acts, and/or the failure to comply with a Court order when such order, entered after notice and hearing, specifically states the repercussions of failure to comply include personal liability. The Receiver shall not be obligated to expend monies, or make improvements to, or to rehabilitate the Property, or to incur or pay any other expenses or bills in connection with its role as Receiver, except to the extent that monies for such matters are available either from operating revenues generated by the Property and/or funds provided by EFM.

d. Apex Colonial, Aloft, any other property managers, and all those in active participation or concert with them who receive notice of this Order, and all those having claims

against the Receivership Property, who receive notice of this Order, are enjoined from and shall not:

- i. **Commit Waste.** Commit or permit any waste on all or any part of the Receivership Property, or suffer, commit, or permit any act on all or any part of the Receivership Property in violation of law, or remove, transfer, encumber, or otherwise dispose of any of the Receivership Property;
- ii. **Collect Income.** Demand, collect, receive, discount, or in any other way divert or use any of the Income, provided, however, if Apex Colonial receives any Income from any third-party Apex Colonial shall remit such amounts to Receiver within three (3) business days;
- iii. **Terminate Any Utility Service.** Terminate or withhold any electric, gas, water, sewer, telephone, or other utility service supplying the Receivership Property, require any utility deposit, or otherwise interfere with the continued operations of the Receivership Property;
- iv. **Interfere with the Receiver.** Directly or indirectly interfere in any manner with the discharge of the Receiver's duties under this Order or the Receiver's possession of and operation or management of the Receivership Property;
- v. **Transfer or Encumber the Receivership Property.** Except at the direction of EFM, expend, disburse, transfer, assign, sell, convey, devise, pledge, mortgage, create a security interest in, encumber, conceal or in any manner whatsoever deal in or dispose of the whole or any part of the Receivership Property including, but not limited to, the Income without prior court order; and,

- vi. **Impair the Preservation of the Receivership Property.** Do any act which will, or which will tend to impair, defeat, divert, prevent or prejudice the preservation of the Receivership Property, including the Income, or the preservation of EFM's interest in the Receivership Property and the Income.
- e. The Receiver shall faithfully perform and discharge the Receiver's duties and obey the Court's orders.
- f. The Receiver is subject to the personal jurisdiction of the Court.
- g. The Receiver's duty to act as Receiver is subject to the Receiver's written acceptance and approval of the terms of this Order. Upon acceptance, the Receiver shall be bound by each and every term contained in this Order and each and every obligation of the Receiver imposed by this Order.
- h. If the Receiver receives notice that a petition for relief under the Bankruptcy Code, Title 11, United States Code, has been filed, and part of the bankruptcy estate includes property that is the subject of this Order (for purposes of this paragraph, the "Bankruptcy Estate Property"), the Receiver shall have the following duties:
 - i. *Turn over Bankruptcy Estate Property if no relief from stay is sought.* The Receiver shall immediately contact EFM and determine whether EFM intends to move in the bankruptcy court for an order for (1) relief from the automatic stay, and (2) relief from the Receiver's obligation to turn over the Bankruptcy Estate Property (11 U.S.C. § 543). If EFM has no intention to make such a motion, the Receiver shall immediately turn over the Bankruptcy Estate Property to the appropriate entity, either to the bankruptcy trustee, if

one has been appointed, or, if not, to the debtor in possession, and otherwise comply with 11 U.S.C. § 543;

- ii. *Remain in possession pending resolution.* If EFM intends to seek relief immediately from both the automatic stay and the Receiver's obligation to turn over the Bankruptcy Estate Property, the Receiver may remain in possession and preserve the Bankruptcy Estate Property pending the ruling on those motions (11 U.S.C. § 543(a)). The Receiver's authority to preserve the Bankruptcy Estate Property shall be limited as follows:

- (1) The Receiver may continue to collect rents and other income;

- (2) The Receiver may make only those disbursements necessary to preserve and protect the Bankruptcy Estate Property;

- (3) The Receiver shall not execute any new leases or other long term contracts; and,

- (4) The Receiver shall do nothing that would effect a material change in the circumstances of the Bankruptcy Estate Property;

- iii. *Turn over Property if no motion for relief is filed within ten (10) days after notice of the bankruptcy.* If EFM fails to file a motion within ten (10) court days after its receipt of notice of the bankruptcy filing, the Receiver shall immediately turn over the Bankruptcy Estate Property to the appropriate entity, either to the bankruptcy trustee, if one has been appointed, or, if not, to the debtor in possession, and otherwise comply with 11 U.S.C. § 543; and,
- iv. *Retain bankruptcy counsel.* The Receiver may petition this Court to retain legal counsel to assist the Receiver with issues arising out of the bankruptcy

proceedings that effect the receivership or the Receiver's ability to perform its duties.

i. The Receiver is not required at this time to enact any proof of claim process for the submission of claims against the receivership estate. To the extent that the Receiver deems it prudent or necessary to establish a proof of claim process in the future, the Receiver may apply to the Court with a proposed process and bar date.

j. Notwithstanding any delay between the entry of this Order and the Effective Date, this Order and any injunction contained within will be in full force and effect as of the date it is entered by the Clerk of this Court, and the Receiver will be empowered pursuant to this Order upon the filing of the Receiver's oath and bond.

11. Amendment of Order.

This Order may be amended for cause after a motion or hearing. This Order may also be amended by agreed order of EFM and the Receiver, with approval of the Court.

12. No Prejudice to Foreclosure/Final Order.

a. This Order shall not prejudice EFM's foreclosure of the Mortgage, or an action by EFM under any security agreement, the other Loan Documents, or the Uniform Commercial Code with respect to the Property, or any of EFM's other claims as set forth in the Complaint or any amendments thereto.

b. The Court finds that there is no just reason for delay and therefore enters this Order as a final order.

IT IS SO ORDERED.

Judge

Date

Submitted by:

/s/ Tiara N. Ross

Tiara N. Ross (0089583)

Sarah C. Pomeroy (0093578)

Assistant City Attorneys

375 South High Street, 17th Floor

Columbus, Ohio 43215

Phone: (614) 645-0781

tnross@columbus.gov

scpomeroy@columbus.gov

*Counsel for Interested Party City of
Columbus*

/s/ Joseph C. Pickens

Joseph C. Pickens (0076239)

jpickens@taftlaw.com

James V. Maniace (0003178)

jmaniace@taftlaw.com

Jonathan N. Olivito (0092169)

jolivito@taftlaw.com

Taft Stettinius & Hollister LLP

65 East State Street, Suite 1000

Columbus, Ohio 43215

Telephone: (614) 221-2838

Facsimile: (614) 221-2007

Counsel for Plaintiff EFM Transfer Agent, LLC

EXHIBIT A

Resume of Robert J. Weiler, Sr.

Robert J. "Bob" Weiler, Sr. joined The Robert Weiler Company in 1957. After receiving an undergraduate degree from the University of Arizona, Bob also earned a Master's degree in real estate and a Doctoral degree in finance from The Ohio State University in 1964 and 1968 respectively. Bob was awarded a Juris Doctorate degree from the Capital University Law School and was admitted to the Ohio Bar in 1983. He has served on the faculty of The Ohio State University, Franklin University and Capital University Law and Graduate Schools and is a regular lecturer for The Ohio Association of Realtors. He served for six years on the Ohio Real Estate Appraiser Board and served as Chairman.

Bob received his MAI and SREA designations and served as President of the Ohio Chapter of the Appraisal Institute and the Columbus Board of Realtors. In 1976, Bob was selected as Realtor of the Year by the Columbus Realtors and the Ohio Association of Realtors and has also served as Director of the National Association of Realtors. And, most recently, Bob was honored with the prestigious 2020 C-Suite Lifetime Achievement Award from Columbus Business First; this award honors two of the most admired CEOs and other top executives in Central Ohio, and is determined by a vote of their peers.

Active in the Columbus community, Bob has served as President of the Columbus Board of Education and has maintained leadership roles for many organizations including Capital University, Center of Science and Industry (COSI), The Mid-Ohio Regional Planning Commission, Pilot Dogs, Inc., Ohio Capital Corporation for Housing (OCCH), Central Ohio Transit Authority (COTA), The Ohio State University Athletic Council, Columbus Urban League and Columbus Metropolitan YMCA. A long time supporter of the United Way, Bob served as Campaign Chairman in 1998.

EXHIBIT B

PROPERTY MANAGEMENT AGREEMENT

This Property Management Agreement ("Agreement") is entered into as of the ____ day of **August, 2021**, by and between **Robert J. Weiler, Sr. of The Robert Weiler Company** as Court Appointed Receiver for certain property known as **Colonial Village Apartments, Columbus, Ohio**, pursuant to a Court Order entered in the **Franklin** County Court of Common Pleas (Case No. ____), whose address is **10 N. High Street, Suite 401, Columbus, Ohio 43215** ("Receiver") and Hayes Gibson Property Services, LLC, a Delaware limited liability company, whose address is 2565 South Breaking A Way, Suite 200, Bloomington, IN 47403 ("Manager").

W I T N E S S E T H

In consideration of the mutual promises and covenants contained herein, the parties agree as follows:

Article 1 Appointment of Agent.

1.1 **Appointment.** Receiver hereby hires and designates Manager as the sole and exclusive managing agent for the property known as **Colonial Village Apartments**, as listed in Exhibit C (the "Property") for the Term (as defined in Section 5.1 below), and Manager hereby accepts such appointment, upon the terms and conditions contained herein.

1.2 **Acceptance of Property.** Manager shall promptly, upon execution hereof, inspect each unit and common facility at the Property and ascertain its general condition. With respect to any unit or facility in the Property found to be in need of repairs, within **sixty (60)** days from the date hereof Manager shall prepare a written report of recommended repairs and the estimated cost thereof required to bring the Property into compliance with Section 2.2 below. Subsequent reports of unfinished work shall be furnished to Receiver, on a monthly basis, until all such work has been corrected or accepted by Receiver. The Property has severe non-compliance with code but also has serious crime and safety issues. Manager shall prioritize the safety of current residents over the repair of units except where repairs are necessary to preserve life safety.

In order to facilitate efficient operation, Manager will inform itself with respect to the layout, construction, location, character, plan, and operation of the lighting, life safety, heating, plumbing, security and ventilating systems, as well as elevators and escalators, if any, and other mechanical equipment at the Property. To the extent in Receiver's possession, copies of guarantees and warranties pertinent to the equipment at the Property and in force at the time of execution of this Agreement may be furnished by Receiver to Manager, who will review them and remain familiar with their requirements and expiration dates and will be responsible for their safekeeping. Manager will further be similarly responsible for the safekeeping of copies of any construction plans and "as-built" drawings furnished to it by Receiver.

1.3 **Designation of Receiver Representative.** Receiver hereby designates **Robert J. Weiler, Sr.**, to serve as the Receiver's representative in all dealings with Manager hereunder. Whenever the approval, consent or other action of Receiver is called for hereunder, such approval, consent or action shall be binding on Receiver if such is specified in a writing, which is executed by said representative. Said representative may be changed at any time in the sole discretion of the Receiver, by written notice to Manager, effective upon receipt by Manager.

- 1.4 **Designation of Manager Representative.** Manager hereby designates Alexandra S. Jackiw, CPM®, to serve as the Manager's representative in all dealings with Receiver hereunder. Whenever the approval, consent or other action of Manager is called for hereunder, such approval, consent or action shall be binding on Manager if such is specified in a writing, which is executed by said representative. Said representative may be changed at any time in the sole discretion of the Manager, by written notice to Receiver, effective upon receipt by Receiver.
- 1.5 **Ability to Perform Services in Ohio.** Manager represents and warrants that it is qualified to do business in Ohio and meets all requirements of the Ohio Division of Real Estate to lawfully provide the third party management of real estate in Ohio. Manager's brokerage license number in Ohio is _____.

Article 2 Services to be Performed.

Manager agrees to perform the following management services pertaining to the Property:

- 2.1 **Employment of Personnel.** At Receiver's direction and expense, on the basis of the operating plan, schedule of job descriptions and requirements and schedule of wage rates and other compensation previously approved by Receiver, as set forth in the Budget referred to in Section 2.10 below, Manager shall, as agent for Receiver, investigate, hire, pay, supervise and discharge the personnel necessary to be employed in order to properly maintain and operate the Property, including, without limitation and if Manager deems appropriate, and the same is provided for in the Budget, a full-time Property Manager. Manager shall not discriminate against any employee or applicant for any term or condition of employment on the basis of any protected class. Such personnel shall in every instance be deemed employees or independent contractors of Manager and not of Receiver. Manager shall have the express right to directly hire, fire, supervise and direct such employees or independent contractors. All salaries, wages, and other compensation of personnel employed by or contracted by Manager hereunder, including a Property Manager, and including so-called fringe benefits, vacation pay, life, disability, medical and health insurance, pension plans, social security, taxes, Worker's Compensation Insurance and related items, shall be Manager's expenses; provided, however, that Receiver shall reimburse Manager for the aforementioned expenses as provided herein and pursuant to an approved budget.

In addition, certain services to the Property may be provided by employees of Manager, and the cost of such services, based on the hourly rate established by Manager for such employees, shall be Receiver's expenses (said rates are attached hereto as Exhibit "A").

- 2.2 **Maintenance and Repair of Property.** At Receiver's expense, Manager shall cause the Property to be maintained according to standards established by the Receiver, including, but not limited to, interior and exterior cleaning, repairs and alterations, plumbing, carpentry and decorating, and such other normal maintenance and repair work as may be deemed desirable or necessary by Manager, subject only to the limitations of the current Budget approved by Receiver and any other limitations imposed by Receiver in addition to those contained herein. For any other item of repair or maintenance involving a single expenditure in excess of **Ten Thousand Dollars (\$10,000.00)**, or annually in the aggregate of One Hundred Thousand Dollars (**\$100,000.00**), except as previously approved in the annual Budget, the prior written approval of Receiver must be obtained; provided,

however, emergency repairs immediately necessary for the preservation or safety of the Property or for the safety of the tenants or other persons or required to avoid the suspension of any necessary service to the Property may be made by Manager without the prior written approval of the Receiver; and provided further, that Receiver agrees to approve any expenditure necessary to prevent Manager from being exposed to liability to third parties, except due to Manager's gross negligence or willful misconduct. Notwithstanding this authority as to emergency repairs, it is understood and agreed that Manager shall confer as soon as possible with Receiver regarding every such expenditure.

Manager shall be entitled to a fee for all construction management services and major capital work performed. The scope of the work and the associated fee is outlined in Exhibit A.

Manager agrees not to permit the use of the Property for any purpose which might void or cause an increase in the premium for any policy of insurance held by Receiver or Manager, or which might render any loss thereunder uncollectible, or which would be in violation of any Legal Requirements (as defined in Section 2.3 below) or other restriction or under any mortgage of the Property. Manager shall to the best of its ability ensure that all tenants are in full material compliance with the terms and conditions of their respective leases and with all Legal Requirements, and to this end, Manager shall see that all tenants are informed with respect to such rules, regulations and notices as Receiver shall require Manager to promulgate.

- 2.3 **Compliance with Legal Requirements.** At Receiver's expense, Manager shall use its best efforts to comply with any and all orders or regulations pertaining to the Property promulgated by any federal, state, county or municipal authority having jurisdiction thereover ("Legal Requirements"), subject to the limitation on repair or maintenance expenditures set forth in Section 2.2 above. Manager acknowledges that the Property is subject to a number of code violation orders. Manager shall not take any such action, however, as long as Receiver is actively contesting or has expressed an intention to contest and promptly institutes proceedings contesting any such order or requirements; provided that, if failure to comply promptly with any such order or requirement would or might expose Manager to criminal liability, Manager may cause the same to be complied with, without the Receiver's approval, and, in such event, Manager shall notify Receiver promptly and in no event later than twenty-four (24) hours from time of receipt of any such order or notice of requirement in writing. Manager hereby represents and warrants to Receiver that it holds all licenses required by all applicable Legal Requirements to act as a property manager in the jurisdiction in which the Property is located and will continue to hold such licenses during the entire Term of this Agreement. Manager shall comply with provisions of the Order appointing the Receiver relating to property management.

- 2.4 **Service Contracts.** On behalf of and as agent for Receiver, and as provided in the Budget, Manager shall enter into or renew contracts for electricity, gas, steam, telephone, water, cleaning, fuel, oil, elevator and escalator maintenance, pest extermination, trash removal and other services deemed necessary or advisable by Manager, subject to Receiver's direction, for the operation of the Property; provided, however, that if providers of goods and services shall require that Manager contract in Manager's own name, Manager may do so within the scope of the authority granted to Manager by Receiver hereby. Subject to the limitations of the current Budget, Manager shall also purchase all supplies, equipment, tools, appliances and materials, which Manager shall deem necessary to maintain and operate the Property. All such contracts, unless otherwise approved by Receiver, shall be

terminable by either party upon not more than thirty (30) days' written notice. Manager shall also acquire in Receiver's name such equipment, tools, appliances, materials and supplies as are necessary to properly maintain the Property, subject to limitations of the current Budget. When taking bids or issuing purchase orders, Manager shall act at all times under the direction of Receiver and shall be under a duty to secure for and credit to Receiver any discounts, commissions, or rebates obtainable as a result of such purchases.

In making payments to any party under any such contract, or to any other vendor, Manager shall, if and as directed by Receiver, withhold a portion of such payments as back-up withholding in accordance with the Internal Revenue Code.

- 2.5 **Collection of Rents and Institution of Legal Proceedings.** Manager is hereby authorized to and shall collect all rent and other charges due from tenants, lessees, licensees or similar entities and otherwise due Receiver with respect to the Property in the ordinary course of business. Receiver authorizes Manager to request, demand, collect, receive and receipt for all such rent and other charges and, upon Receiver's prior approval, to institute legal proceedings in the name of and as an expense reimbursable by Receiver for the collection thereof and for the dispossession of tenants and other persons from the Property, and such expense may include the engaging of legal counsel selected by Receiver for any such matter, which counsel shall be subject to Receiver's reasonable approval. Manager shall promptly notify Receiver of any disputes with tenants or other parties (including, but not limited to, threatened or actual suits).
- 2.6 **Signage.** Manager may place and remove or cause to be placed and removed at Receiver's expense such signs upon the Property as Manager shall deem appropriate, including signs, banners or stickers on or about the Property stating that the Property is under the management of Manager, subject to applicable governmental sign ordinances, statutes and regulations.
- 2.7 **Payments by Manager.** To the extent funds are available in the operating account held by Manager with respect to the Property pursuant to Section 2.8 below, Manager shall, on behalf of Receiver and, pursuant to the Budget, pay, before delinquency:
- (a) All expenditures required to be made in performance of the services specified in Sections 2.1 through 2.6 above;
 - (b) Upon the issuance of an order of the Court permitting the distribution of proceeds to the Lender, all debt service payments on mortgage loans covering the Property (including therein amounts due under any note and mortgage for interest, principal and reserves or escrow funds);
 - (c) The amount of all real estate taxes and assessments levied against the Property which, if not escrowed with any mortgagee or land contract vendor, shall be paid by Manager, before interest and penalties shall begin to accrue thereon. Manager will communicate with the Franklin County Treasurer as to a realistic payment plan for real estate taxes which currently are in arrears; and
 - (d) Amounts otherwise due and payable as operating expenses of the Property incurred under the terms of this Agreement, including the Manager's compensation and insurance premiums pursuant to Section 4.1 below.

Subject to the above restrictions, any payments made by Manager hereunder shall be made at Manager's discretion subject to direction by Receiver as to order or priority out of such funds as Manager may from time to time hold for the account of Receiver as specified in Section 2.8 below, or as may be provided by Receiver. Manager will project the cash requirements for the Property in the Budget. For each month during the Term hereof that Manager reasonably determines that collections will be insufficient to meet such cash requirements, Manager shall request additional funds from Receiver therefor. Receiver agrees to deposit the amount of funds so requested by Manager in the operating account of Manager referred to in Section 2.8 below upon Court approval with no less than thirty (30) days' notice. If at any time there is not sufficient cash in the operating account to pay all bills due and owing on the Property promptly, the Manager will request that the necessary additional funds be deposited by Receiver in said account. Receiver agrees to deposit such additional funds within thirty (30) days thereafter, or as soon as funded by the Lender or Special Servicer. Manager shall not be obligated to make any advance to or for the operating account maintained by Manager pursuant to the terms hereof, nor shall Manager be obligated to incur any liability or obligation for the account of the Receiver without assurance that the necessary funds for the discharge thereof will be provided; however, if Manager shall voluntarily advance for Receiver's account with Receiver's permission any amount for the payment of any necessary expense connected with the maintenance or operation of the Property in accordance with this Agreement, Manager shall give Receiver prompt notice thereof, and Receiver shall reimburse Manager therefor promptly on demand with interest thereon at a rate per annum equal to three (3) percentage points in excess of the rate then announced by the Wall Street Journal as its "prime" or base rate, from the date such payment is made by Manager. Any sums due Manager hereunder may be collected by Manager from future rental or other payments collected by Manager from the Property.

- 2.8 **Bank Accounts.** All funds collected by Manager for the account of Receiver shall be held in trust and deposited in a federally insured depository institution of Manager's choosing, referred to herein as the operating account. All funds in such account shall be the property of Receiver, subject to the express rights of Manager provided herein.
- 2.9 **Tenant Security Deposits.** To the extent available, Receiver shall provide Manager a complete and accurate accounting for all tenant security deposits as of the commencement of the Term. The total amount of such deposits will be delivered to Manager by Receiver on or before the commencement of the Term, which shall be held by Manager in a separate security deposit account, on behalf of Receiver. Manager may pay such deposits to tenants at the expiration of the terms of their leases or at such other times as they may become entitled thereto, as shall be determined by Manager, and Manager may deduct from such deposits appropriate amounts determined by Manager pursuant to the terms of the lease agreement with such tenants, subject to applicable laws regulating security deposits.
- 2.10 **Annual Budget.** Within sixty (60) days after the execution of this Agreement, Manager will prepare for Receiver's approval the annual business plan and budget ("Budget" or "budget") for the first fiscal year or partial fiscal year of the Term. The fiscal year of the Property shall be January 1 to December 31, subject to the right of Receiver to change such fiscal year from time to time. At least ninety (90) days prior to the expiration of each fiscal year of the Term, Manager shall prepare and submit to Receiver the annual budget in draft form for the next fiscal year. The annual budget shall include, but not be limited to, anticipated gross revenues, operating expenses, capital expenditures, debt service payments, management fees and reserves, taking into account without limitation, the general condition of the Property, the expected rate of completion of contemplated repairs

and the occupancy, physical condition of and rentals charged in the competing projects in the area.

Receiver shall have the right to make any reasonable changes or modifications to the draft business plan and budget within thirty (30) days following receipt of same, but no such changes or modifications may alter the payments otherwise due Manager as fees or reimbursement under this Agreement. The budget revised by the Receiver shall be subject to Manager's approval, which shall not be unreasonably withheld. In the event Receiver and Manager shall not reach agreement upon a budget within thirty (30) days of Manager's submission of the initial draft budget or within twenty (20) days following Receiver's submission of a revised budget to Manager, this Agreement may be terminated as a permitted termination by either party by written notice to the other party within ten (10) days thereafter, which termination shall be effective as of the last day of the then current fiscal year. Each such budget, following its approval by Receiver as submitted or as modified as the case may be, shall constitute the "Budget" for the fiscal year covered thereby and shall constitute a standard to which Manager shall adhere. Approval of the annual budget by Receiver shall also constitute Receiver's authorization to Manager to make all those expenditures provided for in the Budget, subject to all terms and conditions contained in this Agreement.

2.11 **Transfer of the Property.** If Receiver decides to sell, mortgage or otherwise transfer the Property or any part thereof or interest therein, or otherwise at Receiver's reasonable request, Manager shall comply in timely manner with all reasonable requests of Receiver in connection with such proposed transfer, including without limitation the following:

- (a) As directed by Receiver, Manager will cooperate and assist in the marketing of the Property;
- (b) Manager will provide a current rent roll stating, for each unit the name of the tenant, the expiration date of the lease, the amount of the security deposit (if any), the date to which rent is paid, any renewal, extension or expansion options or any unexpired tenant incentives, and whether any defaults are known to exist, and Manager will represent and warrant the accuracy of such information to Receiver and to any such proposed transferee;
- (c) Manager will provide a list of threatened or actual suits or other action by private parties or governmental entities, including a factual summary of each such matter, and Manager will represent and warrant the accuracy of such information to Receiver and to any such proposed transferee;
- (d) Manager will provide an updated schedule of personal property belonging to the Property and Manager will represent and warrant the accuracy of such information to Receiver and to any such proposed transferee; and
- (e) Manager will allow Receiver and/or any such proposed transferee to have access to all records for the Property.

2.12 **Leasing of Property.** Manager shall confirm that all commercial tenants of the Property are maintaining insurance in accordance with the requirements of their respective leases.

- 2.13 **Additional Services.** Manager shall provide such additional services as may be described in the attached Exhibit “B” or as may be otherwise agreed upon.

Article 3 Manager's Compensation.

- 3.1 **Amount of Compensation.** Throughout the Term, Receiver shall pay Manager as compensation for the management services rendered hereunder an amount computed and payable monthly which shall be designated “Management Fee” and which shall be equal to the greater of **Fifteen Thousand** Dollars (**\$15,000.00**) or **Four** Percent (**4%**) of the Gross Receipts, as hereafter defined, derived from the Property, for each month. Management is also entitled to receive additional compensation as described in the attached Exhibit “A”.

- 3.2 **“Gross Receipts” Defined.** The term “Gross Receipts” shall mean and include all gross receipts derived from the operation of the Property, including, without limitation, all rent and other sums and charges received from all prospective tenants, tenants and lessees and payments made in consideration of the cancellation of any tenant leases or damages by reason of any default, security deposits to the extent applied to rent, tenant application fees, late rent charges, NSF check charges, miscellaneous administrative charges, utility reimbursement, the proceeds from rental interruption insurance, net receipts from vending machines, concessions and other commercial operations conducted on the Property.

“Gross Receipts” shall not include sums which, under normal accounting practice are attributable to capital, proceeds of claims on account of insurance policies other than rental interruption or similar insurance, the abatement of taxes, awards arising out of taking by eminent domain, discounts and dividends on insurance policies, nor shall “**Gross Receipts**” include sums received by Manager as reimbursement or recovery of items of expense charged the Receiver, such as court costs paid by defaulting tenants, security deposits (to the extent applied to damage) and the like, all of which shall be applied as offsets against the corresponding items of expense.

3.3 **Reports.**

- (a) **Monthly Statements.** Once within each accounting month by no later than the 20th day of the month during the term of this Agreement, commencing with the first full calendar month following the commencement of this Agreement, and within the first full calendar month following the termination of this Agreement, the Manager shall furnish to Receiver a true, correct and complete unaudited statement of cash flow for the preceding calendar month. Notwithstanding anything to the contrary contained herein, Manager shall assist Receiver in submitting an initial report and subsequent monthly reports in accordance with the terms of any court requirement.
- (b) **Annual Reporting.** Manager shall deliver to Receiver within ninety (90) days after the end of each fiscal year of the Property, a Profit and Loss Statement showing the results of operations for that fiscal year and a Balance Sheet of the Property as of the end of that fiscal year, both in form satisfactory to Receiver and certified by Manager at the expense of Receiver. Manager shall also deliver to Receiver within thirty (30) days after the end of each fiscal year a current rent roll of the Property that includes the information specified in Section 2.11(b) above.

- (c) **Tenant Complaints.** Manager shall maintain businesslike relations with tenants, whose service requests shall be received, logged and considered in systematic fashion in order to show the action taken with respect to each. Complaints of a serious nature shall, after thorough investigation, be reported to Receiver with the results of such investigation and appropriate recommendations.
- (d) **Returns Required by Law.** Manager, as Receiver's agent, shall execute and file punctually when due all forms, reports, and returns required by law or by any lender with loans against the Property relating to the employment of personnel and the operation of the Property.

3.4 **Remittance of Funds to Receiver.** The Manager shall simultaneously with the delivery of the monthly reports, but in no event later than the 25th of each month, pay over in accordance with directions reasonably given by Receiver's representative the amount of Gross Receipts for such preceding calendar month less:

- (a) all expenses incurred, including any and all Court approved debt service,
- (b) the Management Fee specified herein, and
- (c) any agreed-upon sums to be reserved for future expenses.

3.5 **Expenses.** Manager shall be responsible for its office expenses, other than the direct operating expenses of the Property and the cost of services of Receiver's employees to the extent rendered for the benefit of the Property.

It is agreed that Receiver shall reimburse Manager and its affiliates for actual, reasonable and necessary out-of-pocket costs which they shall incur as operating expenses in connection with the performance of this Agreement. Manager shall have the discretion, exercised reasonably, to determine the necessity for the expenditure of any such amounts, which shall include, without limitation, reasonable travel, meals, lodging, telephone, electronic communications, postage, air expenses, costs of recruitment (including applicable agent's fee) and other incidental expenses; providing that such reimbursed expenses shall be set forth in the Budget and that none of the foregoing expenses shall be considered Manager's office expenses. It is agreed that Manager shall be entitled to reimbursement of these expenses directly from the Property account at the time incurred. Such reimbursements shall be in addition to the management fee.

3.6 **Books and Records.** Manager agrees to keep and maintain a proper and adequate system of books of accounts and records, all satisfactory to Receiver and in accordance with the cash method of accounting, so as to show accurately and completely all Gross Receipts from and expenses incurred with respect to the Property, and to preserve the same for a period of at least three (3) years after the close of the calendar year to which they relate. Manager further agrees to permit the Receiver and/or its accountants and authorized representatives to examine and copy during regular business hours all books and records of the Manager in any way pertaining to Gross Receipts and expenses and operation of the Property. Manager agrees to keep all financial information concerning the Property confidential at all times during and after the Term of this Agreement, except as expressly authorized in writing by Receiver, or unless Manager shall be under compulsion of legal process to disclose such information. In the event Manager is compelled by legal process

to disclose such information, Manager shall provide prompt prior notice of the same to Receiver.

Article 4 Insurance.

- 4.1 **Insurance Requirements.** Receiver shall cause to be placed, or direct Manager to obtain, insurance in such amounts and coverages, limits and deductibles as shall be reasonably required by Receiver and, if applicable, any mortgagee of the Property, to protect the Property, Receiver and any such mortgagee. Such insurance shall include, but not be limited to workers' compensation insurance, commercial general liability insurance, boiler insurance, fire and extended coverage insurance, fidelity bonds and burglary and theft insurance and rental interruption insurance, and such insurance shall be maintained throughout the Term hereof as an expense of the Property. The foregoing commercial general liability policy shall name Receiver as insured and Manager and any mortgagee of the Property as additional insureds. Manager shall additionally maintain throughout the Term policies of (a) workers' compensation insurance in accordance with statutory requirements, (b) employer's liability insurance with limits of not less than One Million Dollars (\$1,000,000) per occurrence, (c) commercial general liability insurance for bodily injury, personal injury and property damage covering the acts or omissions of Manager, its agents and employees with limits of not less than Two Million Dollars (\$2,000,000) per occurrence, and (d) automobile liability insurance for any owned, hired and non-owned automobiles with limits of not less than Two Million Dollars (\$2,000,000) per occurrence, with Manager named as the insured under each policy and Receiver and any mortgagee of the Property listed as an additional insured under the commercial general liability policy. All insurance procured under this Section 4.1 shall be written on an occurrence basis and procured from companies rated by Best's Rating Guide no less than A-/VII, and which are authorized to do business in the state where the Property is located. Upon Receiver's request, Manager shall provide Receiver with copies of insurance certificates evidencing the insurance required under this Section 4.1. Any insurance obtained by Manager or its agents in accordance with this Agreement will be an expense of the Property and shall be paid directly by Manager.
- 4.2 **Insurance Claims.** Manager shall promptly investigate and make a full written report to Receiver as to all accidents or claims for damage or injury relating to or occurring at the Property, and any damage or destruction to the Property and its estimates of the cost of repair thereof and shall prepare for approval by Receiver any and all claims and all reports required by any insurance company in connection therewith, which claims and reports shall be Manager's responsibility to file in a prompt manner. All such reports shall be filed with Receiver promptly, and in any event within two (2) business days after the occurrence of any such accident, claim, damage, or destruction of a material nature, which shall also be noted in the monthly report delivered to Receiver pursuant to Section 3.3(a) above. Manager is not authorized without Receiver's prior written consent to settle any and all claims against insurance companies for damages to the Property arising out of any policies, including the execution of proofs of loss, the adjustment of losses, the signing of receipts and the collection of money. All claims with respect to personal injury, or damage to property other than the Property, shall be promptly referred by Manager to Receiver for further action and Manager shall use its best efforts to refer these claims to Receiver within one week of notification by the claimant.
- 4.3 **Restrictions in Use of Property Related to Insurance Coverage.** Manager agrees not to permit the use of the Property for any purpose which might void or cause an increase in

the premium for any policy of insurance held by Receiver or Manager, or which might render any loss thereunder uncollectible, or which would be in violation of any legal requirement under any law, ordinance or regulation or other restriction or under any mortgage of the Property. Manager shall to the best of its ability ensure that all tenants are in full material compliance with the terms and conditions of their respective leases and with all legal requirements, and to this end, Manager shall see that all tenants are informed with respect to such rules, regulations and notices as Receiver shall require Manager to promulgate.

- 4.4 **Deductibles; Self-Insured Retention.** Receiver acknowledges that Manager may have available to it various insurance programs in which Receiver may participate. Such insurance programs may be subject to various deductibles or self insured retentions. If Receiver elects to participate in one of these programs and such program includes a deductible or self insured retention, Receiver and Manager shall enter into a separate agreement to govern the assessment and payment of amounts within the deductible or self insured retention.
- 4.5 **Indemnity.** Manager shall indemnify, defend and hold Receiver harmless from and against any and all claims, actions, damages, liabilities and expenses (including reasonable attorneys' fees and court costs) which result from or are caused by the intentional misconduct, negligence or fraud of the Manager, its agents and employees or Manager's breach of this Agreement.

Article 5 Term of Agreement.

- 5.1 **Term.** The term of this Agreement (the "Term") shall commence as of **the Court appointment of the Manager** and shall thereafter continue for a period of one (1) year, unless sooner terminated according to the terms hereof.
- 5.2 **Termination.** This Agreement shall terminate as provided below:
- (a) **Expiration of Term.** Upon expiration of the Term hereof, if the Court approves provided that the Receiver or Manager shall give notice to the other party of its intent to terminate, not less than thirty (30) days prior to the end of the then current one-year period; otherwise, this Agreement shall renew automatically for additional one (1) year periods upon the same terms as contained herein.
 - (b) **Default.** Upon Manager's or Receiver's default hereunder, provided that the Manager or Receiver, as the case may be, does not cure such default within ten (10) business days from receipt of written notice from the other party of such default; provided, however, if such breach cannot be reasonably cured within said ten (10) business days period, and if reasonable efforts to cure said breach have been commenced within said ten (10) business days and continue to be pursued with due diligence to conclusion, then such breach shall not constitute a basis for termination hereof, unless the default is not cured within a reasonable time.
 - (c) **Sale.** Immediately upon the sale of the Property or termination of Receivership, subject to Section 5.6 below.

Termination of this Agreement hereunder shall not release either party from liability for failure to perform any of the duties or obligations as expressed herein and required to be performed by such party for the period prior to such termination.

5.3 **After Termination.** Upon termination of this Agreement as provided herein, and after payment to Manager of all amounts owed it by Receiver under this Agreement, Manager shall forthwith:

- (a) **Deliver the Property.** Surrender and deliver up to the Receiver the Property and all rents and income of the Property on hand and in any bank account which are monies of the Receiver, including tenant security deposits, to the extent not previously credited to the Receiver, after compliance with any notice requirements provided by law.
- (b) **Monies Received After Termination.** Deliver to Receiver as received any monies received by Manager after termination.
- (c) **Supplies.** Deliver to Receiver all materials, supplies, keys, contracts and documents, and such other accountings, papers and records pertaining to this Agreement as Receiver shall reasonably request.
- (d) **Contracts.** Assign such existing contracts relating to the operation and maintenance of the Property as Receiver shall require, which by their terms as assignable, provided that the Receiver herein shall agree to assume all liability thereunder.

Manager's obligation to provide reports and accountings pursuant to Section 3.3 above shall survive termination of this Agreement.

5.4 **Notification of Tenants.** Immediately after the termination of this Agreement or upon the sale of the Property, Receiver and Manager shall notify each tenant of the Property of such termination or sale. Such notice shall identify the name and address of the new owner or manager, as the case may be, of the Property, and shall direct each tenant with respect to the future payment of rent. This notice will be coordinated with the new buyer. Upon termination of this Agreement, Manager shall transfer the control of the account, if any, containing tenant deposits to Receiver, or as directed by Receiver, and the notice to tenants required by this Section 5.4 shall specify the person to whom inquiries regarding such deposits should be directed, and shall otherwise comply with applicable law.

5.5 **Assignment by Receiver.** Receiver may assign its rights and obligations hereunder to any successor entitled to the Property, and upon such assignment, Receiver shall be relieved of all liabilities accruing after the effective date of such assignment; provided, however, that no transfer of the Property and/or assignment of this Agreement shall relieve the Receiver of liability hereunder unless such assignee or transferee of the Property shall expressly assume the obligations of the Receiver hereunder in writing. Upon assignment or transfer of the Property, Receiver shall promptly comply with the notice provisions of Section 5.4 above and of all applicable laws. In the event the Property shall now or hereafter be subject to an assignment of rents and leases for security purposes, the provisions of this Section 5.5 shall apply upon the exercise by the assignee under such assignment of its rights thereunder, in the same manner as if the Property itself were transferred as of the date of such exercise.

- 5.6 **Post-Termination Matters.** Upon any termination or expiration of this Agreement for any reason whatsoever, Receiver expressly agrees that Manager may remove any of its documents which are proprietary to Manager (including, without limitation, equipment, employee files, manuals, software programs, stored data and internal correspondence or a proprietary nature) but specifically excluding financial records, documents, correspondence or other materials proprietary to the Property which shall be deemed property of Receiver. Manager shall have the right to make copies of all other non-proprietary files and information relating to its management of the Property.

Article 6 Notices.

All notices, demands, consents, approvals, reports and other communications provided for in this Agreement shall be in writing and shall be given to Receiver or Manager at the address and/or email address set forth below or at such other address and/or email address as they may specify hereafter in writing:

RECEIVER: The Robert Weiler Company
10 N. High Street, Suite 401
Columbus, OH 43215
Email: bob@rweiler.com
Attn: Robert J. Weiler, Sr.

MANAGER: Hayes Gibson Property Services, LLC
2565 South Breaking A Way – Suite 200
Bloomington, IN 47403
Email: ajackiw@hayesgibson.com
Attn: Alexandra S. Jackiw, CPM®

Any notice, request, demand, approval or consent given or required to be given under this Agreement shall be in writing and shall be deemed to have been given if and when posted in the United States registered or certified mail, return receipt requested, delivered by reputable national overnight courier, postage or fees prepaid or sent via electronic mail. Notices shall be deemed received upon the earlier of actual receipt, whether delivered by hand delivery, express services or electronic mail, or two (2) business days following the day mailed by certified mail.

Article 6 Miscellaneous.

This Agreement shall be governed by and interpreted in accordance with the laws of the State of **Ohio**, without giving effect to principles of conflicts of law. This Agreement constitutes the entire Agreement between the parties regarding the subject matter herein, and no amendments, changes or modifications may be made to this Agreement without the express written consent of each of the parties. If any term or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms and provisions of the Agreement shall remain in full force and effect, provided that the essential purpose of the Agreement is preserved. No failure or delay by a party in exercising any right hereunder or any partial exercise thereof shall operate as a waiver thereof or prohibit any other or further exercise of any right hereunder. This Agreement shall benefit and be binding upon the parties and their respective successors and assigns; provided, however, that Manager shall not have the right to assign this Agreement without the prior written consent of Receiver, which consent may be withheld in Receiver's sole discretion. This Agreement may be executed and delivered (including by facsimile, "pdf" or other electronic

transmission) in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.

The provisions of this Paragraph shall survive the expiration or earlier termination of this Agreement.

This Agreement is contingent upon the approval of the Court.

[Remainder of page intentionally left blank; Signature page to follow]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, as of the date first written above.

RECEIVER:

Robert J. Weiler, Sr., of The Robert Weiler Company, as Court Appointed Receiver for certain property known as Colonial Village Apartments pursuant to a Court Order entered in the Franklin County Court of Common Pleas (Case No. _____)

By: _____

Name: Robert J. Weiler, Sr.

Its: _____

Dated: _____, 20____

MANAGER:

Hayes Gibson Property Services, LLC,
a Delaware limited liability company

By: _____

Name: Alexandra S. Jackiw

Its: Chief Operating Officer

Dated: _____, 20____

EXHIBIT A

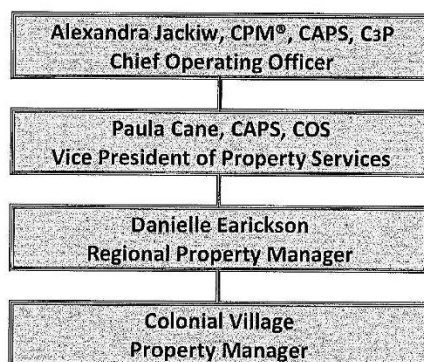
ADDITIONAL MANAGEMENT COMPENSATION

1. **Start Up Fee:** \$7,500.00 for initial set-up of software and accounting functions and completion of due diligence inspections.
2. **Leasing Bonus:** An amount equal to \$_____ per executed lease or renewal
3. **Capital Supervision Fee:**
 - Capital projects between \$25,000 and \$50,000 – Five Percent (5.0%) of total project cost
 - Capital projects between \$50,001 and \$75,000 – Four Percent (4.0%) of total project cost
 - Capital projects in excess of \$75,000 – Three Percent (3.0%) of total project cost
4. **Transition Fee:** An amount equal to one month's fee to transition the property management/accounting and provide a final management report upon termination of the management agreement

EXHIBIT B
ADDITIONAL SERVICES

1. Management Structure: On-Site and Off-Site

The on-site property manager will report directly to a HGPS Area Manager. The Area Manager will report to a Regional Property Manager who will, in turn, report directly to Paula Cane, Vice President of Property Services. The overall management structure is outlined below.



Proposed On-Site Staffing Schedule:

POSITION	HOURS WORKED/WEEK	HOURLY RATE	ANNUAL SALARY
Property Manager	40.0	\$28.00/hour	\$ 58,240
Assistant Property Manager	40.0	\$20.00/hour	\$ 41,600
Leasing Consultant (3)	120.0	\$17.00/hour	\$106,080
Maintenance Supervisor.	40.0	\$25.00/hour	\$ 52,000
Assistant Maintenance Sup.	40.0	\$20.00/hour	\$ 41,600
Maintenance Technician (2)	80.0	\$17.50/hour	\$ 72,800
Groundsperson/Porter	40.0	\$15.00/hour	\$ 31,200
TOTALS	400.00		\$403,520

22% surcharge for benefits, taxes, FUTA, SUTA, etc. = \$ 88,774

TOTAL project salary cost = \$492,294 (\$969/unit)

EXHIBIT C

EXHIBIT C

EXCLUSIVE RIGHT TO SELL OR LEASE LISTING CONTRACT

Commercial — Multi-Family — Land



In consideration of the agreement of the Broker and Owner as set forth herein concerning:

Property Address: Colonial Village Apartments - 508 units located at 1256 Rand Avenue, Columbus, OH 43227 ("Property")

Parcel Number(s): See attached Exhibit A County: Franklin

Owner and Broker agree to the following:

Listing Period

1. Owner hereby grants to the Broker the exclusive right to **(X) sell () exchange () lease** the Property commencing List Date 7/7/21 through Expiration Date 1/7/22. Owner offers the property at a price of \$ _____ on the following terms: acceptable to Lender and the Court, as those terms are defined below

Brokerage Fee

2. A. Receiver hereby agrees to pay the Broker a fee of 5%* of the selling price of the Property, if the Property is 1) sold or exchanged by current Broker with another broker or 2) 4% of the selling price of the Property if the property is sold or exchanged by current Broker without another broker.
- B. Owner hereby agrees to pay the Broker a fee of N/A of the gross rent due during the lease term if the Property is 1) leased by current Broker alone or another broker or 2) a written offer to lease on the terms provided herein by current Broker alone or another broker is submitted to the Owner signed by a ready, willing and able Tenant.

In addition, Owner shall pay brokerage fee as follows: (these terms to be included in Lease):

- 1) A fee of N/A of the gross amount due during the lease term for extension of renewals, payable on extension of renewal.
- 2) A fee of N/A of the gross amount due during the lease term if Tenant leases additional space in building from Landlord or enters into subsequent lease of Premises.
- 3) A fee of N/A of the selling price of the Property if sold to Tenant during terms or within N/A days after term or renewal or extension, with credit given for the unearned portion of any lease commission already paid.

If the Receiver and a Buyer (tenant) sign a Purchase Agreement, but the closing of the sale of the Property will not take place until after the original term of this Listing Contract, then Receiver's Obligation to pay a fee, as stated in this Listing Contract, shall be extended to coincide with the closing date. This commission shall be payable in cash at closing or upon full lease execution.

- C. Above stated fees shall be paid if the Property is sold, exchanged or leased or a contract is entered into for the sale, exchange or lease, within 90 days (Protection Period) after the expiration of this Listing Contract (or any extension thereof) to any person or entity with whom the Broker has had negotiations prior to expiration, provided the Broker notifies Receiver of the names of such person (s) or entities, in writing, prior to Listing Contract (or any extension thereof) expiration.
- D. Receiver authorizes the Broker to compensate other Brokers as buyer-broker or tenant-broker from the fee paid (_____) Yes (_____) No

Initials

Initials

Marketable Title

3. Receiver agrees, in the event of a sale or exchange, to furnish satisfactory evidence of marketable title to the Property and convey the Property by transferrable and recordable fiduciary deed as appropriate.

Receiver's Cooperation

4. Receiver hereby authorizes Broker to place a marketing sign on said property and remove all other "For Sale" and/or "For Lease" signs. Further, Receiver authorizes Broker and all salespersons authorized by listing Broker to have access to the property at all reasonable times for the purpose of showing it.

Copyright

5. In the event Receiver provides agent any photos, floor plans or other copyrightable material related to the listed Property (collectively, the "Content"), Receiver and/or Lessor hereby grants to Agent's Broker an irrevocable, non-exclusive and fully sub-licensable right (through multiple tiers) to use, reproduce, modify, adapt, publish, create derivative works from, distribute, perform and display any such Content (in whole or in part) worldwide and/or to incorporate any such Content (in whole or in part) in other works in any form, media, or technology now known or later developed.

Advertising

6. Receiver authorizes and directs Brokerage to advertise the listing, to list the property in the MLS and/or the chosen Commercial Information Exchange (CIE) subject to the Rules and Regulations of the MLS and/or CIE, to provide timely notice of status changes of the listing to the MLS and/or CIE, and to provide sales information including selling price to the MLS and/or CIE upon sale of the property. Brokerage is further authorized to place information about the Real Estate in any other informational service medium to advertise and promote the sale of the Real Estate. Receiver gives consent to other Brokerages to include information regarding the Real Estate in their advertising according to State of Ohio regulations and the rules of the MLS and/or the chosen CIE through Internet web sites. The history of listings via the informational service medium currently in use is available to others. Neither the MLS, CIE nor the Brokerage has responsibility or liability for the dissemination of such information. Receiver and Broker warrant that this Listing Contract, to the best of each parties knowledge, to be correct and accurate.

Disclosure & Owner's Covenants

7. Receiver specifically acknowledges and understands that if, to the best of Receiver's knowledge, Receiver knows of facts, environmental or other, materially affecting the value and desirability of the property, whether said facts, environmental or other, are readily observable or not, then Receiver is under a duty to disclose said facts, environmental or other to the Buyer, Tenant, and Broker. If Receiver knows of said facts, Receiver shall set them forth by written document attached to this Listing Contract. Receiver has fully reviewed this Listing Contract and the document(s) attached, (if any) affecting the property, and Receiver warrants to the best of his/her knowledge the accuracy of said information.

Receiver's Acknowledgements

8. A. **It is illegal, pursuant to the Ohio Fair Housing Law, Division (H) of Section 4112.02 of the Revised Code, and the Federal Fair Housing Law, 42 U.S.C.A. 3601, as amended, to refuse to sell, transfer, assign, rent, lease, sublease, or finance housing accommodations; refuse to negotiate for the sale or rental of housing accommodations; or otherwise deny or make unavailable housing accommodations because of race, color, religion, sex, familial status, as defined in Section 4112.01 of the Revised Code, ancestry, military status as defined in that section, disability as defined in that section, or national origin or to so discriminate in advertising the sale or rental of housing, in the financing of housing, or in the provision of real estate brokerage services.**

It is also illegal, for profit, to induce or attempt to induce a person to sell or rent a dwelling by representations regarding the entry into the neighborhood of a person or persons belonging to one of the protected classes.

- B. Receiver acknowledges that there are no other listing contracts for lease or sale of the property.
- C. Receiver acknowledges receipt of Broker's written "Policy on Agency" and the State of Ohio "Agency Disclosure" form.

Binding Contract

9. This is a legal and binding contract on all parties hereto including their heirs, legal representative, successors, and assigns.
10. Further conditions: If there is a co-operating agent involved in the transaction, then the fee shall increase from 5% to 6% of the total sales price.

Signature(s)/Remarks

11. If Receiver is composed of more than one person, I/we represent that those not signing, if any, have authorized my/our signing on their behalf. Receipt of a copy of this contract is hereby acknowledged.

12. **MISCELLANEOUS**

This Contract is subject to the approval of the Court in Case No. _____ (the "Court"). EFM Transfer Agent, LLC is the Lender in the Court. This Contract is submitted in support of Lender's application to the Court to appoint a Receiver for the owner of the Property

Remarks _____

Signed this Date July 2021

Accepted

_____ Broker

By _____ Salesperson

RECEIVER

Signature _____
of

Receiver
Robert J. Weiler, Sr., Court Appointed Receiver for Apex Colonial OH LLC
by Order of the Court

Address _____

City _____ State _____ Zip _____

Telephone _____ Fax _____

Email _____

By its signature below, Lender indicates its approval of the above terms and that it will submit this Exclusive Right to Sell or Listing Contract to the Court for approval

LENDER
EFM TRANSFER AGENT

X

K Meagher

By: Katherine Meagher
Its: Authorized Signatory

Exhibit A

010-134519-00	1180 OLNEY DR
010-134533-00	3668 ALLENDALE DR
010-134534-00	3666 ALLENDALE DR
010-134535-00	1228-1230 BROOKWAY...
010-134518-00	1240 BROOKWAY RD
010-134517-00	1248 BROOKWAY RD
010-134516-00	1256 BROOKWAY RD
010-134515-00	1264 BROOKWAY RD
010-134514-00	1272 BROOKWAY RD
010-134513-00	1280 BROOKWAY RD
010-134512-00	1288 BROOKWAY RD
010-134511-00	1294 BROOKWAY RD
010-134510-00	1300 BROOKWAY RD
010-134532-00	1301 BROOKWAY RD
010-134531-00	1295 BROOKWAY RD
010-134530-00	1287 BROOKWAY RD
010-134529-00	1279 BROOKWAY RD
010-134528-00	1271 BROOKWAY RD
010-134527-00	1263 BROOKWAY RD
010-134526-00	1255 BROOKWAY RD
010-134525-00	1247 BROOKWAY RD
010-134524-00	1239 BROOKWAY RD
010-134536-00	1225-1227 BROOKWAY...
010-134523-00	3663 ALLENDALE DR
010-134522-00	3651 ALLENDALE DR
010-134521-00	3639 ALLENDALE DR
010-134520-00	1179 OLNEY DR
010-137574-00	3514-3562 RAND SQ
010-137573-00	3557-3560 RAND CR
010-137572-00	3533 RAND CT
010-137571-00	1171 RAND AV
010-137570-00	3600-3626 ALLENDAL...
010-137576-00	1256 RAND AV

EXHIBIT D

Receiver Robert J. Weiler, Sr.'s Compensation and Approved Expenses

\$400 per hour plus extraordinary out of pocket expenses necessary for the Receiver to perform his functions and as approved by the Court and EFM. Fee applications shall be submitted monthly to the Court and EFM for approval.

The Receiver shall not receive any compensation for the listing and sale of the property which is subject of this action. All such compensation shall be paid to the Exclusive Listing Agent per a separate agreement.

EXHIBIT 4

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

EFM TRANSFER AGENT, LLC,	:	
	:	
Plaintiff,	:	Case No.
	:	
v.	:	Judge
	:	
APEX COLONIAL OH LLC, et al.,	:	
	:	
Defendants.	:	

AFFIDAVIT OF ALEXANDRA S. JACKIW

STATE OF Indiana)
) ss:
COUNTY OF Hendricks)

I, Alexandra S. Jackiw, having been duly sworn by the undersigned Notary, state under oath that the following is true to the best of my personal knowledge:

1. I am the Chief Operating Officer of Hayes Gibson Property Services, LLC (“Hayes Gibson”).
2. I am authorized to make the statements below on behalf of Hayes Gibson.
3. I make this Affidavit in support of the Joint Motion of Plaintiff EFM Transfer Agent, LLC (“EFM”) and Interested Party City of Columbus (the “City”) for the Appointment of a Receiver (the “Joint Motion”).
4. I am familiar with the facts set forth herein, which are based on my personal knowledge and review of relevant documents.
5. I understand that if Robert J. Weiler, Sr. (“Mr. Weiler”) is appointed receiver of the Premises, which is defined in the Joint Motion, Mr. Weiler anticipates hiring Hayes Gibson as the property manager for the Premises.

6. With over 65 years of experience, Hayes Gibson is a leading expert in the multifamily affordable housing industry.
7. Hayes Gibson manages over 12,000 units in over 100 cities and 16 states.
8. Hayes Gibson has expertise in property operations, financial management, regulatory compliance, facilities maintenance, value recovery, and resident and community relations.
9. All of Hayes Gibson's necessary licenses are in good standing.
10. Hayes Gibson's usual and customary management fee is 4.0% of gross collections; \$15.00 per unit start-up fee; 5.0% capital supervision fee for capital work in excess of \$25,000.
11. Hayes Gibson's proposed fee for managing the Premises is the greater of 4.0% of gross collections or \$15,000 per month; \$7,500.00 start-up fee; 5.0% capital supervision fee for capital work in excess of \$25,000.
12. In the year prior to the filing of the Joint Motion, Hayes Gibson has not received any fees from Defendant Apex Colonial OH LLC ("Apex Colonial"), any persons or parties closely related to Apex Colonial, or any persons or parties known to be adverse to Apex Colonial and having a material claim in the receivership.
13. Hayes Gibson affirms that gross proceeds of any sale or other transaction conducted by it in connection with the receivership will be immediately turned over to the receiver or placed in a separate trust account.
14. Hayes Gibson checked this engagement for potential conflicts and did not identify any.

15. Hayes Gibson will avoid any conflicts of interest in connection with any work for the receivership.

16. Hayes Gibson will not, under any circumstances, directly or indirectly purchase, acquire, or accept any interest in any property it manages, appraises, or sells through the receivership.

Further affiant sayeth naught.

Alexandra S. Jackiw
Signature

Alexandra S. Jackiw
Printed Name

Sworn to before me and subscribed in my presence this 25 day of August 2021.



Hendricks County
Denise Kerr
The UPS Store
Expires: 3/12/2025

[Signature]
Notary Public

Exhibit 5

**IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO**

EFM TRANSFER AGENT, LLC,	:	
	:	
Plaintiff,	:	Case No.
	:	
v.	:	Judge
	:	
APEX COLONIAL OH LLC, et al.,	:	
	:	
Defendants.	:	

AFFIDAVIT OF JAMES A. COUTINHO

STATE OF OHIO)
) ss:
COUNTY OF FRANKLIN)

I, James A. Coutinho, having been duly sworn by the undersigned Notary, state under oath that the following is true to the best of my personal knowledge:

1. I am a partner with the law firm Allen Stovall Neuman & Ashton LLP (“Allen Stovall”).
2. I am authorized to make the statements below on behalf of Allen Stovall.
3. I make this Affidavit in support of the Joint Motion of Plaintiff EFM Transfer Agent, LLC (“EFM”) and Interested Party City of Columbus (the “City”) for the Appointment of a Receiver (the “Joint Motion”).
4. I am familiar with the facts set forth herein, which are based on my personal knowledge and review of relevant documents.
5. I understand that if Robert J. Weiler, Sr. (“Mr. Weiler”) is appointed receiver of the Premises, which is defined in the Joint Motion, Mr. Weiler anticipates hiring Allen Stovall as legal counsel for the receiver and the receivership estate.

6. The attorneys at Allen Stovall and I have significant experience in receivership cases involving real estate and can address all legal needs of the receiver.

7. Aside from my experience representing receivers generally in this Court, I am also counsel in numerous real property receiverships involving nuisance matters that have arisen before the Franklin County Municipal Court, Environmental Court, and am familiar with the prosecutor team with the City that is assigned to this property.

8. Allen Stovall proposes that its fees in this matter be charged at a discounted rate that is used when it represents court fiduciaries.

9. That discounted rate is a \$30 per hour reduction in each attorney's standard hourly rates.

10. Those rates are set forth in the table below. This proposed compensation is reasonable given the level of experience required to handle these matters and the ongoing cost of legal services for this locality.

Attorney	Standard Hourly Rate	Discounted Fiduciary Rate
Richard K. Stovall, Partner	\$425.00	\$395.00
James A. Coutinho, Partner	\$350.00	\$320.00
Tom Shafirstein, Associate	\$285.00	\$255.00
Bradley Hemmer, Associate	\$225.00	\$195.00
Michele Doan, Paralegal	\$150.00	\$120.00

11. The attorneys at Allen Stovall and I are licensed to practice law in Ohio and are in good standing with the Supreme Court of Ohio.

12. Allen Stovall maintains professional liability insurance in an amount at least equal to the minimum coverage required by Rule 1.4 of Ohio Rules of Professional Conduct.

13. In the year prior to the filing of the Joint Motion, Allen Stovall has not received any fees from Defendant Apex Colonial OH LLC ("Apex Colonial"), any persons or parties closely related to Apex Colonial, or any persons or parties known to be adverse to Apex Colonial and having a material claim in the receivership.

14. Allen Stovall checked this engagement for potential conflicts and did not identify any.


15. Allen Stovall will avoid any conflicts of interest in connection with any work for the receiver or receivership estate.

16. Allen Stovall affirms that gross proceeds of any sale or other transaction conducted by it in connection with the receivership will be immediately turned over to the receiver or placed in a separate trust account.

17. Allen Stovall will not, under any circumstances, directly or indirectly purchase, acquire, or accept any interest in any property it manages, appraises, or sells through the receivership.

18. Allen Stovall has not received a retainer or other compensation yet for preparatory work relative to the receivership.

Further affiant sayeth naught.


James A. Coutinho

Sworn to and subscribed before me this 25 day of August 2021.




Kiranjot Sroa, Notary Public
Notary Public

Notarized online using audio-video communication